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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

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UNITED STATES OF AMERICA

v.

NOBODY

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1:21-cr-41-05-JL

July 23, 2021

11:10 a.m.

TRANSCRIPT OF MOTION HEARING
HELD VIA VIDEOCONFERENCE
BEFORE THE HONORABLE JOSEPH N. LAPLANTE

Appearances:

For the Government:

Seth R. Aframe, AUSA
United States Attorney's Office

For the Defendant:

Patrick J. Richard, Esq.
Richard Law Office

Christopher Hayden Brown, Esq.
Brown, Suarez, Rios & Weinberg

Anessa Allen Santos, Esq.
IntelliLaw

Court Reporter:

Liza W. Dubois, RMR, CRR
Official Court Reporter
United States District Court
55 Pleasant Street
Concord, New Hampshire 03301
(603)225-1442

I N D E X

<u>Witness:</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
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Nobody

By Mr. Brown

12

By Mr. Aframe

37

<u>Exhibits:</u>	<u>For ID</u>	<u>In Evd</u>
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None marked.

1 P R O C E E D I N G S

2 THE CLERK: Good morning, your Honor.

3 THE COURT: Good morning, everybody.

4 THE CLERK: Court is now in session and has before
5 it for consideration a motion hearing in criminal case
6 20-cr-41-05-JL, United States vs. Nobody.

7 THE COURT: All right. Let's observe some
8 formalities.

9 This is a -- this is an appeal -- I don't know if
10 you want to call it an appeal or a motion to reconsider Judge
11 Lynch's detention order in this case, which I reviewed and I
12 think I issued an order, a margin order, you know, on the
13 docket saying that I didn't see a basis to overturn that order
14 or to grant release under conditions, but I also didn't want to
15 be dismissive of the defendant's position because we're talking
16 about an important issue here, which is his liberty pretrial.
17 And so I just didn't want to be dismissive of it and not listen
18 to everything that he and his counsel wanted to tell me, so I
19 provided the opportunity for a -- a hearing so we can do that.
20 And that's what we'll do now.

21 I want to observe a few formalities. We're convened
22 here on a videoconference platform as opposed to -- as opposed
23 to the usual physical appearance in a public courtroom.

24 Is there any objection to that, Mr. Richard?

25 MR. RICHARD: No, your Honor.

1 THE COURT: All right. I want to make reference
2 then to a -- because normally a bail hearing or a detention
3 release hearing would be held in a courtroom because it's a --
4 it's a public proceeding.

5 This, by the way, is a public proceeding and it's
6 open to members of the public to participate by the
7 videoconference platform.

8 Hold on a second.

9 All right. So I -- Mr. Nobody -- Mr. Nobody, you
10 had a comment there.

11 MR. RICHARD: Your Honor, I'm going to let the Court
12 know that that is not the defendant posting that. Clearly from
13 the bubbles other people with that name have posted something.
14 But that -- I'd ask whoever's involved, if they're here in
15 support of Mr. Nobody to actually remain silent verbally and
16 electronically during this proceeding to help. Nothing that is
17 written will help Mr. Nobody and could only be used to hurt
18 him. So please let the attorneys do the work here.

19 THE COURT: I actually wouldn't have even raised
20 that. I thought it was from the defendant. I thought it
21 was -- you're telling me, Mr. Richard, that's not from your
22 client.

23 MR. RICHARD: That's correct. If you look in the
24 bubbles, there are other people named Nobody in the bubbles.
25 He is in the bubble named Merrimack County.

1 THE COURT: I see. Yup. I see you, sir. I saw you
2 wave.

3 THE DEFENDANT: Okay.

4 THE COURT: All right. And, well, you -- you
5 certainly have my assurances that I'm not ever going to be
6 dismissive of any of your arguments or claims, but I understand
7 and I'm not -- I'm not concerned about it given that it wasn't
8 you.

9 I wasn't so much concerned about the comment as I
10 was about your client -- your attorney's control over the
11 situation. I don't want to -- I don't want him to have to deal
12 with that extraneous information.

13 That's okay. We'll proceed anyway.

14 I do want to observe some formalities that are
15 important, though. I want to just get back to that so it's on
16 the record.

17 This is a public proceeding. Under Rule 83.8,
18 anybody taking part in the proceedings remotely or by
19 videoconference shall not photograph, broadcast, or televise
20 any of these court proceedings. The prohibition applies to
21 counsel, the parties, the media, and any members of the public
22 participating.

23 I'm happy to have all the members of the public
24 participating that want to be here. It was publicly posted and
25 anybody who tries to gain access during the proceeding will be

1 allowed access. We try to make this as close to a public
2 hearing in a public courtroom as we can under the
3 circumstances.

4 But transporting Mr. Nobody to and from the
5 detention facility would cause extra quarantining for him,
6 probably on both legs of the trip, and would expose him and
7 maybe expose others to unjustifiable health and safety risk at
8 this point. Given his willingness to participate in this way,
9 we'll proceed in this way.

10 I do want to make reference to some administrative
11 orders that have been issued by the court in connection with
12 our court proceedings during the public health emergency caused
13 by the coronavirus pandemic. Those are administrative orders
14 number -- the ones issued in the year 2020 were orders numbered
15 20-7 -11, -13, -25 through 27, and -34. The ones issued in the
16 year 2021 were 21-10, -13, -14, -18, -19. And I incorporate
17 all the findings and rulings of those other orders into the
18 record of this proceeding by reference.

19 I further find that delaying this proceeding longer
20 in order to allow for physical presence in a public courtroom
21 would be -- would be jeopardizing the interests of justice
22 because if there's going to be a release in this case, it
23 should happen sooner, not later, and I need to make sure I'm
24 listening to all the arguments that are being presented on
25 Mr. Nobody's behalf.

1 I do want to assure you, Mr. Nobody, of this. You
2 know, I -- I -- comments that are made from the public, even if
3 you agree with them and they're from supporters, they're not
4 going to be held against you. Those aren't issues you need to
5 worry yourself about at all.

6 THE DEFENDANT: Thank you.

7 THE COURT: Okay. Mr. Richard, you saw my order. I
8 didn't see anything in the written record that would change my
9 thinking from what Judge Lynch described in his detention
10 order, but that doesn't mean you might not be able to cast him
11 in a different light, so I'm listening.

12 MR. RICHARD: Your Honor, Mr. Brown is actually
13 prepared to present something to the Court, so I'd defer to
14 him.

15 THE COURT: Mr. Brown, welcome. I'm sorry. Please
16 proceed.

17 MR. BROWN: No problem, your Honor. We have a whole
18 team, so it can be confusing.

19 Good morning, sir. Good to see you. Happy Friday.

20 Your Honor, as a housekeeping matter, the first --
21 at the -- I won't call it the first detention hearing -- the
22 government played exhibits which are -- in the magistrate's
23 order are referenced, various comments that were made during a
24 16-minute phone call. The entirety of that phone call was not
25 played at the first hearing.

1 I realize the Court has limited time, but I do want
2 to ask the Court to listen to the entire call because it gives
3 a context. It's 16 minutes long. And then I'm going to ask
4 Mr. Nobody about the remarks in the context in which -- of the
5 entire phone call.

6 So we're prepared, I believe, to play that with the
7 help of our courtroom deputy, Ms. Allen, to present that
8 exhibit. It's listed as Government's Exhibit 6 on their
9 proposed exhibit list, document number 74.

10 So at this time, barring any technical difficulties,
11 or if the Court's okay with it, we'll play that now.

12 THE COURT: I'm totally okay with it. Do you -- you
13 shouldn't apologize for wasting my time or taking time. This
14 is what we're doing here. So you take the time you need,
15 Attorney Brown.

16 MR. BROWN: I appreciate that. Let's see if
17 Ms. Allen is able to get that queued up.

18 I believe you're on mute, Ms. Allen.

19 THE COURT: She doesn't look muted, but I'm not
20 hearing her voice.

21 We cannot hear you. Attorney Allen, we cannot hear
22 you. Now you're on mute. There you go. Try it now.

23 MS. ALLEN SANTOS: How about now?

24 THE COURT: Much better.

25 MS. ALLEN SANTOS: Okay. Wonderful. Thank you.

1 Changing speakers. Let's give this a try.

2 Can everybody hear that?

3 MR. AFRAME: (Shakes head.)

4 THE DEFENDANT: No.

5 THE COURT: No, I can't hear it. Are you trying to
6 do a screen share or something like that?

7 MS. ALLEN SANTOS: No. All right. That's right, I
8 need to screen share. Thank you for that.

9 THE COURT: Yeah.

10 MS. ALLEN SANTOS: All right. And click the share
11 sound button. And here we go.

12 THE COURT: There you go.

13 (Audio recording played.)

14 MS. ALLEN SANTOS: Now can everybody hear that?

15 THE COURT: Yes.

16 MS. ALLEN SANTOS: Perfect. All right. I will
17 continue. Thank you for your patience.

18 (Audio recording resumed.)

19 MS. ALLEN SANTOS: If other people on this call
20 could mute their mics. Thank you.

21 I'll continue playing where we left off, your Honor.

22 THE COURT: Hold on, Attorney Allen.

23 Real quick. Who was -- he just referred to his
24 counsel at his detention hearing. Who represented him?

25 MR. AFRAME: John Apruzzese.

1 THE COURT: Thank you, sir.

2 Please proceed with the tape.

3 MS. ALLEN SANTOS: Yes, your Honor.

4 (Audio recording resumed.)

5 THE COURT: Mr. Brown, you're on mute.

6 MR. BROWN: I apologize, your Honor.

7 Thank you for listening to that, your Honor. If I
8 may, at this time I'd like to call Mr. Nobody as a witness.

9 THE COURT: Please proceed.

10 MR. BROWN: Okay.

11 THE COURT: Well, we've got --

12 THE CLERK: Your Honor --

13 THE COURT: We're going to need to swear him in.

14 MR. BROWN: Yes.

15 THE COURT: I just want to make sure -- Mr. Nobody,
16 right?

17 THE DEFENDANT: Yes.

18 THE COURT: I want to make sure you understand you
19 don't have any obligation to -- it's your decision about
20 whether you testify or not in a proceeding like this. You have
21 rights not to incriminate yourself in any way. And I'm not
22 suggesting you're going to incriminate yourself at all, I just
23 want you to understand that you don't have to testify in a
24 hearing like this. Do you understand that?

25 THE DEFENDANT: I do understand it. Thank you for

1 making sure.

2 THE COURT: All right.

3 And, Mr. Brown, have you been over with your client
4 his right -- his right against self-incrimination and that he's
5 basically waiving it when he testifies in a proceeding like
6 this?

7 MR. AFRAME: Yes, sir, I have. I've explained to
8 him that anything that's said here, obviously in the presence
9 of the Court and the government, can be used at further
10 proceedings, including trial, and also he subjects himself,
11 obviously, to cross-examination if he chooses to become a
12 witness within the scope of what we're discussing. And he's
13 chosen to do that today.

14 THE COURT: All right.

15 And, Mr. Nobody, that's true, what your attorney
16 just explained? He's been over that with you?

17 THE DEFENDANT: Yes, I do understand both -- both
18 issues.

19 THE COURT: And it's your -- it's your free and
20 voluntary choice today to testify?

21 THE DEFENDANT: It is.

22 THE COURT: All right. I'm not suggesting
23 anything's going to be used against you, but it could be, and
24 you just need to have your eyes open about that going into it.

25 THE DEFENDANT: I'll try not to say anything stupid.

1 THE COURT: All right.

2 THE DEFENDANT: And just in advance, excuse my
3 language before.

4 THE COURT: I'd be making similar apologies if I
5 were in your shoes, only because I have the same bad habits.
6 So don't worry about it.

7 Go ahead.

8 MR. BROWN: If I may inquire, your Honor?

9 THE COURT: You may. Please proceed.

10 DIRECT EXAMINATION

11 BY MR. BROWN:

12 Q. All right. First of all, I just -- if you don't
13 mind, I'll refer to you as Rich, because I know you as that and
14 I feel strange saying Mr. Nobody every time.

15 To give some context to this phone call, because
16 this appears to be the main issue based on the previous orders,
17 this call, first of all, would you agree that you were very
18 upset when you made that call?

19 A. Oh, I was irate.

20 Q. Now, I just heard you apologize to the Court for
21 some of your language. Is it fair to say you're embarrassed at
22 some of the remarks that you made during the call --

23 A. I'm a little red-faced listening to that phone call
24 in public. Although I was aware it was being recorded, it
25 really wasn't -- it wasn't the way I would want to present

1 myself in public normally. It was intended as a private phone
2 call between friends who understand each other and each other's
3 vagaries, even though I knew there were eavesdroppers.

4 Q. Sure. All right. Let me just -- some general
5 background. Let's talk a little bit about your philosophy.

6 Do you -- do you believe that anyone has the right
7 to use violence against another person outside of in
8 self-defense?

9 A. No, I don't. I don't believe in any initiation of
10 force, that's use of force except in self-defense. You got it
11 right.

12 Q. Have you ever advocated for initiation of violence
13 against -- against the U.S. Government at large or individuals
14 in the government like -- like witnesses in this case?

15 A. No. I mean, I've -- what I said in the court was --
16 or on the phone was, you know, cursing the police, but I was
17 not advocating for that.

18 Q. You weren't trying to tell your friend, go out and
19 hurt law enforcement officers?

20 A. Oh, God, no. And he wouldn't -- he never would
21 anyway.

22 Q. All right. Have you -- not just during that phone
23 call but during the pendency of this case, have you threatened
24 or caused to be threatened any law enforcement officer or
25 civilian witness in this case?

1 A. No.

2 Q. Have you ever been convicted of any crime of
3 violence, sir?

4 A. No.

5 MR. BROWN: Now, the government is -- your Honor, I
6 believe the government's going to stipulate in their objection,
7 but I still want to ask my client about this. There's a
8 reference made to a violation of probation hearing and a
9 finding of a state court judge that there was a -- a use,
10 possession, and brandishing of a dangerous weapon as a
11 violation. I'm going to ask him about that real quick.

12 Q. Although I think the government is stipulating that
13 both sides have actually gotten to view that hearing and, in
14 fact, Rich, you were not found guilty of brandishing the
15 dangerous weapon; is that correct?

16 A. No. The judge found that because I was under
17 physical attack that I acted properly in self-defense.

18 Q. And he found the state hasn't established its burden
19 that you were a danger?

20 A. That's correct.

21 Q. And that was during a situation in which friends of
22 yours were being physically attacked and threatened in the
23 Keene town square?

24 A. Yes. We were attacked by a group of hoodlums and I
25 picked up a -- a metal piece of camera equipment and I stepped

1 between three attackers and a lady friend of mine.

2 Q. But you didn't strike anyone with it?

3 A. I did not strike anyone. I just stood there and
4 looked mean.

5 THE COURT: So from --

6 Q. And the judge --

7 THE COURT: Mr. Brown, so that was, what? That was
8 over in the Keene District Court?

9 MR. BROWN: Yes, your Honor.

10 THE COURT: Who was the judge?

11 MR. BROWN: I think my client will remember.

12 THE DEFENDANT: It was -- I believe his last name
13 was Cleveland.

14 THE COURT: Okay. Thank you.

15 MR. BROWN: And, again, I don't believe the
16 government's disputing this. When that allegation was made in
17 their objections, neither side had access to it, but it turns
18 out there was actually a video recording of the proceedings.
19 We both watched it and that was, in fact, the finding of the
20 court.

21 THE COURT: So if I understand your -- what you're
22 establishing correctly, Mr. Brown, basically you've told me
23 that the Court found him not dangerous or dangerous, but also
24 did find that his brandishing of a weapon was appropriate under
25 the circumstances? Is that --

1 MR. BROWN: Yes, your Honor. Yes, that's exactly
2 what the Court found. The Court did find him -- to be clear,
3 and I don't want to obfuscate anything. The Court still
4 revoked his probation for use of marijuana and for failing to
5 do a substance abuse treatment program which he freely
6 admitted, but the Court found he did not use a weapon in a
7 dangerous manner.

8 I think the Court's actual terminology was I find
9 the manner in which he brandished it was a defensive manner. I
10 think that was the -- a direct quote of the district court
11 judge.

12 THE COURT: And that was roughly when? You know,
13 what year are we talking about?

14 THE DEFENDANT: 2015, '16.

15 THE COURT: Thank you. All right.

16 Q. Now, I want to get into the context of this actual
17 call. All right? Now, first, you've already admitted you were
18 upset and you're embarrassed of your tone and some of the
19 things you said.

20 Now, you've had plenty of time to reflect on that,
21 but at the time you made the call, you'd been in jail for what,
22 a year or two, something like that?

23 A. I -- I kind of lost track of time. It was between
24 one and two weeks, probably a week and a half.

25 Q. And at that point in time, you didn't have a lot of

1 information in terms of -- you didn't have discovery, right?

2 A. No. I had had ten minutes of discussion with my
3 attorney the day that I was arrested. He had talked me into --
4 into waiving a bond hearing and then he disappeared and
5 wouldn't take my calls.

6 Q. All right. So you didn't have discovery, you knew
7 that there was a charge, one of your charges in your
8 indictment, maxxed out at 20 years. Was it your belief at that
9 time that the government was seeking and you may actually be
10 getting 20 years in prison?

11 A. Yes. I didn't understand how the -- how the
12 guidelines worked. And when he said that if you're going to do
13 20 years, there's a rebuttable presumption that you won't
14 appear for trial and you should be held without bond, I thought
15 that meant if you're actually likely to do 20 years, not if the
16 maximum theoretical sentence is 20 years.

17 Q. Since then you've had time to learn about the
18 sentencing guidelines and how that actually works?

19 A. Yes. And apparently my exposure is much less dire
20 than I thought it was at the time.

21 Q. Also at the time, we heard you talk plenty about
22 this, is it fair to say that you also -- and I realize I'm
23 leading here a little bit, your Honor, but to try to move
24 things along, if the government isn't objecting -- you also
25 were making reference to I'm just here because I don't have a

1 license to trade and why should I have to have a license.

2 Since then you've learned through the discovery
3 process, particularly in regard to Mr. Freeman, that the
4 government is alleging more than just people trading without a
5 license?

6 A. Well, yes. They're alleging that our trading
7 without a license enabled other people to commit fraud is my
8 understanding.

9 Q. Right. So at the time that you're making the
10 remarks you made in the phone call, you're just thinking, I'm
11 in here because bank people don't want me trading Bitcoin
12 without a special license they have. You weren't aware that
13 the government had this whole other series of allegations,
14 particularly involving Mr. Freeman, which have yet to be
15 proven, but you weren't aware that all that evidence was out
16 there until you started reviewing that with us, right?

17 A. Yes. I knew that there had been frauds, where money
18 had been deposited to our account, where somebody had been
19 tricked into depositing money into our account, but as far as I
20 knew, that was a fraud where we were the victim. Because what
21 happened is that that money was then pulled back out off your
22 account and returned to the person who had been conned. We had
23 already sent out the Bitcoin, so we were the ones who lost
24 money when that happened.

25 Q. But, now, you -- now you're aware, and I'm not

1 asking you to comment on whether --

2 (Unidentified voices.)

3 MR. BROWN: Someone's unmuted here. Is there
4 somebody, a Thomas Estes, if you could mute yourself, please.

5 Q. But you are aware now that the government seeks to
6 introduce quite a bit of evidence that -- of transactions that
7 while didn't involve you directly, but in which it's alleged
8 people were scammed out of money so that a third party could
9 get Bitcoin in exchange for that money?

10 A. I have -- I have seen some of the 302s. I don't
11 know how many of those people were not made whole.

12 Q. But you're aware that's the allegation, that --

13 A. I'm aware that that allegation exists now, yes,
14 and it's more understandable that the state feels it has an
15 under -- an under -- an interest in preventing this, having
16 seen those allegations.

17 Q. All right. But at the point, again, you didn't have
18 that knowledge, you were being held without bond, and you were
19 upset; right?

20 A. Yes.

21 Q. Okay. Now, one of the things that the government
22 alleges -- and this is, again, by way of background, before I
23 get into your actual remarks. The government's alleging in its
24 objections that you may have access to a large amount of money.

25 Do you, in fact, personally have, really, any

1 resources at this point you can access?

2 A. No. I have no -- I have -- I have probably got
3 access to less than \$10,000 that I know of.

4 Q. And you personally do not have -- I think you had a
5 passport, but it's expired; is that correct?

6 A. I'm pretty sure it expired. I went to Canada for my
7 uncle's funeral, but that was I'm pretty sure over a decade
8 ago.

9 Q. Okay. So if you -- if you wanted to flee, your
10 resources are less than \$10,000 and you currently don't have a
11 valid passport to leave the U.S.?

12 A. Yes. And as I said on the recording, not only do I
13 not want to flee, if I lose my life and America ends up free,
14 that to me is a win. I want to see America free more than I
15 want to be personally free.

16 Q. You mentioned \$42,000 belonging to the church, the
17 church that you founded. That 42,000, is that currently
18 subject to a forfeiture action?

19 A. I believe -- I believe that that's been seized.

20 Q. Okay. And so that \$42,000 is not available to you
21 right now if you were to get out of jail; is that correct?

22 A. It is not. Even if it was, I assume I would be
23 under bond conditions not to convert it, so there wouldn't be
24 anything I could do until after the trial with it.

25 Q. All right. So let me talk about this -- there's

1 really six specific remarks during the 16-minute phone call
2 that I think were of big concern to the magistrate judge. The
3 government has certainly raised them as its concerns. The
4 magistrate judge has indicated that the reason for your
5 detention is these remarks; that absent these remarks, there
6 wouldn't have been grounds for detention. So I want to talk
7 about them one by one.

8 We just heard them.

9 THE COURT: Wait a minute. Wait a minute. What did
10 you just say again, Mr. Brown?

11 THE COURT: I want to make sure I understand your
12 argument.

13 MR. BROWN: I guess I am engaging in argument in the
14 middle of a question. I apologize for that.

15 THE COURT: It's okay.

16 MR. BROWN: I'm just trying to highlight the
17 importance of these questions to my client; that these are --
18 these seem to be the main basis for him -- for the original
19 order of detention --

20 THE COURT: Oh.

21 MR. BROWN: -- as the magistrate indicated absent
22 these remarks, there wouldn't have been grounds, based on his
23 history and ties to the community, to detain him.

24 THE COURT: Yeah. Can you direct me to -- can you
25 direct me to where Judge Lynch said that?

1 MR. BROWN: Yes, your Honor, I can.

2 THE COURT: Because I'll be honest with you; I'm not
3 particularly focused on the phone call at all. I mean, I --
4 you know, I think lots of phone calls like that happen in the
5 jail that people are angry about the charges, very angry at
6 their lawyers. It's not uncommon.

7 There was a few things he said, that Mr. Nobody
8 said, that I realize are provocative if taken seriously. They
9 are. But, I mean, it's not my main focus.

10 But, yeah, show me in Judge Lynch's order what
11 you're referring to.

12 MR. BROWN: So Judge Lynch's order, for the record,
13 is Document 76.

14 THE COURT: Yup.

15 MR. BROWN: On page 3 of that order, the second
16 paragraph, Judge Lynch says, I quote -- and this is, to put it
17 in context, after he's analyzed the case law. He says: The
18 government requests detention based on its contention that the
19 defendant poses a danger to the community.

20 THE COURT: Yeah.

21 MR. BROWN: In support of detention, the government
22 points to the extensive weight of the evidence, the defendant's
23 alleged active substance abuse, and his position that he is not
24 in need of treatment.

25 THE COURT: All right.

1 MR. BROWN: He's a marijuana advocate, your Honor.
2 That's the reference there.

3 And his criminal record which includes drug offenses
4 and convictions for criminal contempt and obstruction of
5 government administration.

6 And this is the key part, we believe, of the order.

7 Those factors, while relevant, standing alone would
8 likely not support a dangerousness finding. However, when one
9 adds the threatening context of a recorded conversation while
10 the defendant was incarcerated, the balance tips in favor of
11 detention.

12 THE COURT: All right.

13 MR. BROWN: So it appears the reasoning --

14 THE COURT: I get it.

15 MR. BROWN: Yeah.

16 THE COURT: I see what you're saying.

17 To orient me properly on the legal question, this is
18 a presumption case, though, right?

19 It's not? So what's the -- what's the statutory
20 maximum.

21 MR. BROWN: Statutory maximum, I believe, on one
22 count is 20 years.

23 THE COURT: Give me a moment.

24 MR. BROWN: I'm sure Mr. Aframe will correct me if
25 I'm wrong --

1 THE COURT: Yeah. Mr. Aframe, you were shaking your
2 head saying it's not a presumption case.

3 MR. AFRAME: It's a 20-year maximum, but it's not a
4 controlled substance offense, so it's not --

5 THE COURT: Right.

6 MR. AFRAME: (Shakes head.)

7 THE COURT: Right. Yeah. Not a drug case. Yup.

8 MR. AFRAME: Correct. No.

9 MR. BROWN: And I think that is reflected in the mag
10 order which is not a presumption but finding that the
11 government had met its burden of clear and convincing evidence
12 that he constituted a danger and there were no conditions that
13 would protect. Specifically it seemed the concern of based on
14 the phone call was the law enforcement officials of the state
15 of New Hampshire.

16 THE COURT: Yeah, I see. Yeah.

17 MR. BROWN: That's how I would summarize it. I hope
18 that's fair.

19 So I will speed it along through these issues
20 because I understand what the Court's saying about it may have
21 a different level of concern here. But for the record, because
22 that is the basis, to me, of the order, if I can go through
23 these six briefly, your Honor.

24 THE COURT: Understood. I just want to -- I just
25 want to make sure I'm following here.

1 MR. BROWN: Yes, your Honor.

2 THE COURT: And by the way -- by the way, I want --
3 Attorney Brown, I want you to take as much time as you need on
4 this phone call, you know, and develop whatever record you
5 want. I'm not trying to move you along quickly by saying I'm
6 not focused on the phone call. I'm just trying to signal that,
7 you know, the phone call, while it does sound a little
8 egregious, I think, to people who weren't used to kind of
9 thing, you know, criminal detention and release, it is -- it's
10 not something that's surprises me a lot, given the
11 circumstances of the case, the charges, the defendant's
12 political attitude. It all is part of the mix and I'm trying
13 to give -- I'm trying to -- I'm trying to hear his call in
14 context as opposed to just take it right at face value. That's
15 all I'm saying.

16 MR. BROWN: Thank you, your Honor, for explaining
17 that, and I do appreciate you giving us as much time as we
18 need, your Honor.

19 And I'll also add as a remark -- and this is our
20 fault; we could have asked for the whole call to be played for
21 the magistrate judge. He only had the benefit of hearing these
22 six excerpts in a vacuum. And that's not a dig on the
23 government; they have a right to present those that way. We
24 could have said, well, we want you to listen to the whole
25 thing. We didn't do that at that time.

1 So the Court now has had the benefit of hearing the
2 entire thing in context, as you said.

3 Q. So, Rich, number one, you know, I'm paraphrasing,
4 corrupt piece of shit attorney, MF'r needs to die, was that an
5 actual death threat towards your court-appointed attorney or
6 was it rather an expression of frustration?

7 A. Well, it wasn't a threat grammatically, it was a
8 curse. And, no, it was certainly not -- I certainly had no
9 thought that, you know, my old AA crony was going to go out and
10 whack my lawyer. Good God, you know. It was just a matter
11 of -- it was just a matter of blowing off -- off steam and, you
12 know, it -- it was a curse.

13 Q. Okay. So, in fact, I think you mentioned to me the
14 other day knowing now what you know about how the process
15 works, I think you said you felt like you owe him an apology.

16 A. Yeah. Well, the thing -- there are a couple of
17 things that I didn't know.

18 The first thing that I didn't know when that phone
19 call was being made was that Ian Freeman was still being
20 detained. I thought that even the alleged ringleader had
21 gotten out the same day we were arrested and I was still
22 sitting in here, because he told me not to try to get bond.
23 And -- which would have been an insane inversion because, you
24 know, I was a very small part of this whole mess.

25 And then the -- the other thing is I didn't know

1 that the prosecution only requested that two defendants be
2 detained. So --

3 Q. You -- you weren't even aware that the prosecution
4 hadn't sought detention on four of the folks?

5 A. No. I thought the prosecution had just demanded
6 detention on everybody as a matter of course and all five of my
7 codefendants, including the alleged ringleader, had gotten out
8 while my attorney had told me, oh, no, just sit in jail and
9 then didn't call me for a week and a half.

10 That -- so it was his -- if you're listening to
11 this, John, sorry about that. I didn't understand the
12 situation.

13 And I told him as such by phone when -- when we --
14 when he finally did get in touch.

15 The other frustration was that he takes collect
16 phone calls from jail only between 3:00 p.m. and 5:00 p.m. and
17 the one hour a day I was allowed out of my cell never fell
18 between those hours. So I literally couldn't even call him.

19 Q. And then you made -- you made some references to,
20 you know, various foul language, evil pieces of shit that run
21 the system, and anybody working in the system is evil. Was
22 that meant as a threat or is it just a statement of your
23 opinion about the banking system and the financial system in
24 the United States?

25 A. It was a -- a badly phrased statement of opinion.

1 Certainly there -- there's -- I mean, even grammatically
2 parsing that, there's no threat you can find in there. There
3 is just -- you know, foul words.

4 Q. Now, your friend -- it's not you who makes reference
5 to a .50 cal, but I believe your friend says, I couldn't shoot
6 them in the head with a .50 cal, but I could go after them with
7 my words.

8 Was that a reference to him saying we don't use
9 violence, but we certainly use words and invective, we
10 certainly put our opinion out there?

11 A. Yeah. I think you said I knocked them over with my
12 words. And I said really.

13 Q. Okay. And you've never said anything about a .50
14 cal or shooting a government agent. That was him saying I
15 can't do that.

16 A. I -- I did not at that point. At one point later in
17 the phone call I said somebody needs to start shooting cops,
18 which we'll get to, I'm sure.

19 Q. Well, that's my next question. That's the most
20 egregious remark, it seems to me.

21 At that point -- and, again, we've gone through your
22 state of mind in the jail -- that general statement of cops,
23 were you referring to the cops in your case or were you
24 referring to cops that had been -- that had -- you'd just read
25 in recent article about another person who had been killed by a

1 seemingly unlawful action of law enforcement?

2 A. Yeah. I mean, what I was responding to and what was
3 on my mind when I made that comment was -- it wasn't from
4 reading, it was from my previous phone call to my friend
5 Melanie who had given me the news that yet another innocent,
6 unarmed black person had been killed by police. And this was
7 before -- another thing that I did not understand is I did not
8 expect the killer of -- of George Floyd to be brought to
9 justice.

10 And so what I was -- what was going on in my head,
11 and I didn't -- that didn't enunciate at all, but what was
12 going on in my head is that people need to start shooting back
13 in self-defense if the police are going to be killing them with
14 impunity. And I must say I was very much relieved when George
15 Floyd's killer was brought to justice and I was also, frankly,
16 very much surprised by that.

17 Q. We've covered this a little bit, but your reference
18 to getting heroin and killing yourself, that's when you
19 believed -- what, you're -- you're 52; is that right?

20 A. Yeah, I'm 52 years old. So what I was imagining is
21 a future where I spend 22 years or 20 years in prison and then
22 got out at the ripe age of 72 to be homeless for the rest of my
23 life because I hadn't had a chance to build up anything to live
24 on, any kind of retirement.

25 So it was a very bleak future that I was imagining

1 for myself at that time.

2 Q. All right. And then this -- this boogaloo, you
3 know, now, okay, this is a word that's being thrown around in
4 popular culture.

5 Is it your understanding this word can have a lot of
6 different meanings to a lot of people?

7 A. Yeah. I would say it's - I mean, certainly it's not
8 in Merriam-Webster's Unabridged.

9 Q. So for some people, it may mean an actual -- their
10 desire to engage in an armed, you know, civil war or overthrow
11 the government; for some people it could mean that, right?

12 A. It could mean that, and that would result in what I
13 call the boogaloo perhaps.

14 Q. But for other people, could it also just mean that
15 they generally believe that at some point, whether it's due to
16 hyperinflation, collapse of the dollar, whatever it may be, due
17 to a lot of different issues that we have that at some point
18 the system itself will collapse on its own?

19 A. Yeah. The boogaloo, to me, if you were to -- if I
20 was to define it for Merriam-Webster, it would be that state of
21 disorder that would follow the breakdown of civil society as a
22 result of any one of a number of features. I can see it
23 happening if Texas decides to secede; I can see it happening
24 from hyperinflation, where all the sudden the government can no
25 longer pay its employees in any meaningful way because the

1 dollar is worthless and there -- and the military and law
2 enforcement just say, screw you guys, we're going home; it
3 could be any number of things that could set off that state.
4 But the boogaloo itself is that state of disorder that is
5 imagined when it's just every man for himself.

6 Q. Okay. And one last thing of concern from the phone
7 call, and understandably the government raises this because you
8 make a remark, I wish I hadn't forgotten to push the panic
9 button.

10 Now, can you make -- can you explain to the Court
11 what that means? Is that some kind of device to call a militia
12 or to set off an explosive or something violent in nature?
13 What is that?

14 A. No, it's completely nonviolent. I write a cell
15 phone app. I'm the chief programmer on a cell phone app called
16 Cell 411. And basically this -- this cell phone app is a way
17 of -- we call it crowd sourcing emergency management. So you
18 hit a -- a panic button on your phone and that sends out a
19 message to other users of the app who happen to be your friends
20 that say this person is at this place and he needs help.

21 And they -- and it also turns on the camera on your
22 phone so that you can livestream to a server what's going on in
23 front of you. And that's important because frequently if
24 people see that you're filming them doing something bad to you,
25 they'll take your phone away and delete the video. But --

1 Q. You're --

2 A. But if you've already streamed it to a server, they
3 can't do that.

4 Q. For example, that would have been useful that day in
5 Keene -- in the town center of Keene when those hooligans from
6 out of town were attacking the female is to have something like
7 that where you've got a recording of it you could show to law
8 enforcement and then -- and that you could show to other
9 people.

10 A. Exactly. And that night actually in particular my
11 phone was stolen by that group of hooligans because I dropped
12 it when I picked up the bar. So my video of that incident was
13 lost, but yet it was the video of that incident that saved me
14 in court. If they have -- if we hadn't had video of what
15 happened to us that night, I probably would have been violated
16 for much worse for having that monopod or using that monopod in
17 the way that I did because under New Hampshire law, it didn't
18 become a weapon until it was used in a threatening manner.

19 Q. If Judge Laplante grants you some conditions of
20 release that allow you to get out of jail, are you willing to
21 abide by any conditions the Court sets?

22 A. Yes. I mean, assuming they're not just egregiously
23 immoral, yes.

24 Q. Well, I don't expect the judge to set egregiously
25 immoral conditions if he does grant your release, so --

1 A. Something that would require me to rob old ladies or
2 something.

3 Q. For example, you and I and Ms. Allen have been
4 through the numerous types of conditions in the pretrial
5 detention statute; for example, staying in the District of
6 New Hampshire, refraining from trading in coins, which has been
7 a condition on the other defendants; no contact with the other
8 defendants except for maybe possibly for the Free Talk Live
9 radio business. Conditions like that, if the Court orders
10 those, you have no problem following those, correct?

11 A. Well, in order to gain a release, I would have to
12 give my word that I would obey those restrictions. And being
13 who I am, my word is very important to me.

14 Q. You would give your word?

15 A. Yes. If I give my word, I keep it.

16 Q. How long have you lived in New Hampshire, sir?

17 A. I've lived in New Hampshire for a little over a
18 decade. I moved in 2000 -- oh, actually, I remember the date.
19 I moved February 15th, of 2009.

20 Q. Now, we see a lot of friends and supporters on this
21 call. Is it fair to say that you have dozens or scores of
22 friends, very close friends, in the Keene community and
23 throughout the state of New Hampshire?

24 A. Yes, I think so. There's a -- there's a large group
25 of people, some of whom say they were inspired to move here by

1 my actions, and I don't want to lose those people.

2 Q. Who is Tamsin Thorn?

3 A. Tamsin Thorn is my girlfriend and, if we manage to
4 get it together, the future mother of my child.

5 Q. Okay. And where does she live? What town in
6 New Hampshire does she live in?

7 A. She lives up in Whitefield. I think I've got that
8 right.

9 MR. BROWN: Now, she's written a letter which, your
10 Honor, is incorporated as an exhibit from our prior motion.

11 Q. And in that letter she said that you would be able
12 to stay with her during the pendency of the case. Where --
13 would you agree to stay at that address?

14 A. Yes.

15 Q. Okay. Now, you have -- your parents are still
16 alive; is that right, sir?

17 A. Yes, my parents are still alive. There's a
18 reference to them on the phone call. They are elderly.
19 They're both in their -- in their 90s, but they're still alive.

20 Q. All right. And they live in the state of Michigan?

21 A. They do.

22 Q. Okay. So, you know, if you were to flee the
23 United States while you're out on bond, you know, there would
24 be a chance you may never get to see them again.

25 A. A likelihood, you know. That would be permanent

1 exile from the country and I -- I have promised my mother that
2 if my dad goes, I'm going to go back there for a while and make
3 sure she's okay.

4 Q. Now, you made reference to an app you were
5 programming. You are a trained computer programmer; is that
6 correct?

7 A. That's right.

8 Q. Now -- and, of course, not crypto trading related,
9 but would you be seeking employment as a computer programmer
10 while on bond?

11 A. Well, I would be continuing on Cell 411 and, yes,
12 that would be my primary work as well as -- as well as my -- my
13 Evangelistic pursuits, which the church pays -- basically I
14 work for food for the church. They feed me.

15 MR. BROWN: All right. I -- I have no further
16 questions for Mr. Nobody, your Honor, just argument after that,
17 and so I tender the witness.

18 THE COURT: Let me ask you a question, Mr. Brown,
19 just based on that last number of questions.

20 Mr. Nobody explained that he has been in the state
21 about ten years. Do you know where he was living before that?
22 And there's a big gap -- I'm looking at his record and there's
23 a big gap between 1993 and I'm assuming maybe it was Michigan,
24 I don't know, and then 2009 when he had his first New Hampshire
25 arrest.

1 What -- do you know when he arrived in
2 New Hampshire?

3 MR. BROWN: If I can ask him, Judge, I can establish
4 that, if that's all right. I know he lived in Florida before
5 New Hampshire. He had a computer programming job in Florida,
6 was married. Unfortunately, his wife passed. He's originally
7 from Michigan, which is where his parents reside.

8 May I ask him a few more questions to try to
9 satisfy --

10 THE COURT: Yeah.

11 MR. BROWN: -- the Court?

12 THE COURT: Yeah.

13 Q. Again, what year did you arrive in New Hampshire,
14 sir?

15 A. I arrived in New Hampshire on February 15th of 2009.

16 Q. Where did you live before that, sir?

17 A. Before that I was going to college in Michigan for a
18 while and -- back in my parents' hometown. And before that I
19 was working as a computer programmer in Florida. After my wife
20 died, I kind of abandoned my career --

21 Q. How many years --

22 A. -- for a while.

23 Q. -- were you in Florida -- approximately from what
24 year to what year were you in the state of Florida?

25 A. Approximately from 1995 to 2005. And I -- I worked

1 as a computer programmer that entire time for several Fortune
2 500 clients, as well as at least one startup.

3 Q. And from 2005 until your move to New Hampshire,
4 would that be the period you were back in Michigan going to
5 school and staying with your parents?

6 A. Yeah. After my wife died, I had kind of a collapse.
7 And so I wanted to do something relaxing, so I went back to
8 college and studied Shakespeare and Middle Eastern history and
9 just all kinds of -- just to keep my mind working.

10 MR. BROWN: Does that satisfy the Court's --

11 THE COURT: Yeah.

12 MR. BROWN: -- curiosity on that issue, Judge.

13 THE COURT: Exactly. Yup. Thank you.

14 MR. BROWN: So, again, I do tender the witness to
15 the government.

16 THE COURT: Okay. Cross-examination.

17 CROSS-EXAMINATION

18 BY MR. AFRAME:

19 Q. Good afternoon, Mr. Nobody.

20 A. Hello.

21 Q. So what I understood from the essence of the
22 questioning that we just heard is that at the time you were
23 really upset about your case and based on some information
24 right now, you're less upset; is that fair?

25 A. Yeah. I mean, I would -- I think the best word is

1 probably terrified, and I am no longer in that state.

2 Q. In that state, you were pretty volatile; you'd agree
3 with me about that?

4 A. Oh, yeah. I was very angry.

5 Q. And you were -- you know, you did say that people
6 needed to start shooting pigs, right?

7 A. Yes, I did.

8 Q. And that -- I mean, that's slang for people should
9 start shooting police.

10 A. Yes.

11 Q. And today is July 23rd, 2021, and you've been in --
12 in jail now since sometime in March, right?

13 A. Yes. I've been in jail for four months now, just
14 over.

15 Q. And you're aware that your trial is sometime
16 probably in May of 2022?

17 A. I -- the last date that I heard bandied about it was
18 July, but it could be May. That's one of the dates I've heard
19 mentioned.

20 Q. Okay. And my question is on the -- there's a long
21 time between now and then, correct?

22 A. Yes.

23 Q. And do you expect a lot of different things are
24 going to happen in your case?

25 A. I do. I don't expect in my case and -- I don't

1 expect things and, as a matter of fact, my attorney informs me
2 that it is impossible for me to actually get what I thought
3 might happen --

4 MR. BROWN: I'm going to object. I would object at
5 this time and ask you to stop.

6 If I may, your Honor, I don't think Mr. Aframe meant
7 this, but I think it's going into the area where my client is
8 now talking about privileged conversations about trial
9 strategy.

10 THE COURT: Yeah.

11 MR. BROWN: I don't think that's how Mr. Aframe
12 meant the question --

13 THE COURT: No.

14 MR. BROWN: -- for the record.

15 THE COURT: Understood.

16 Mr. -- your conversations, Mr. Nobody, with your
17 attorneys are all privileged and --

18 THE DEFENDANT: Okay.

19 THE COURT: -- you don't want to give that up. And
20 if you talk about your conversations with them, you could give
21 it up. So when you answer the questions, don't refer to your
22 conversations with your lawyers.

23 THE DEFENDANT: Okay. All right. Let me say that
24 to the best of my knowledge and belief then, things cannot
25 possibly get as bad as I thought they were when I made that

1 phone call.

2 Q. Okay. But -- but there remains a lot of unknowns
3 out there I guess is my only point. Right?

4 A. Certainly.

5 Q. And whether it's 20 years or less, you do understand
6 you face a period of incarceration as you're currently charged?

7 A. Yes, it's certainly possible.

8 Q. And you I think said that you have, and it's evident
9 from this phone call, that you have a lot of supporters?

10 A. I do.

11 Q. And that people have come to New Hampshire because
12 they support you?

13 A. True.

14 Q. And it's fair to say that you're a leader of people
15 because they respond to you?

16 A. I like to think so.

17 Q. And in that call, when you were upset, you were
18 talking about shooting police to a friend.

19 A. Uh-huh.

20 Q. Correct?

21 A. That's true.

22 Q. And maybe that person didn't listen to you, it
23 doesn't seem like he did in that call, but there's lots of
24 other people out there.

25 A. Well, he did listen to me in that call and he's

1 listened to me for ten years. He's a confidant that I have
2 known since the day I moved to New Hampshire and so he is
3 somebody who knows what part of my output needs to be filtered
4 out and discarded. He is --

5 Q. Okay.

6 A. -- somebody that I use as a sounding board so that I
7 don't say stupid things in public.

8 Q. And can you tell -- can you -- does -- does everyone
9 that you know respond to you that way?

10 A. Probably not everyone, which is why I'm very careful
11 when I -- when I'm in a very dark mood, I'm very careful who I
12 confide to.

13 Now, obviously, amongst my unintentional confidants
14 was a Securus employee or a district attorney who didn't know
15 how to interpret what I was saying, but that's not normally the
16 case. Well, I kind of think the FBI might listen to a lot of
17 my phone calls, but it's -- at least it's -- I don't think the
18 FBI is going to go out and act on anything that I recommend.

19 Q. And in a -- you know that the task of the
20 government -- it seems to me you're very familiar with your
21 case. In the government's response here, they attached a
22 Twitter -- I think it's Twitter -- feed where you were
23 suggesting that it's time for the gallows, right?

24 A. Actually, what I said was this is the same
25 government that tells us that marijuana is more dangerous than

1 oxycodone, I think, where are the guillotines.

2 Q. Excuse me, it was the guillotines. And the
3 guillotines is used to kill people, right?

4 A. Well, the guillotines are actually used as a means
5 of execution. As far as I know, they've only been used by the
6 state to kill people. So they are a means of administering the
7 death penalty legally.

8 Q. Okay. And you were distributing that comment pretty
9 widely, right?

10 A. I was, just as Kathy Griffin distributed a
11 photograph of herself holding up Donald Trump's head like a
12 trophy. The rough-and-tumble of political speech is and always
13 has been volatile and it has always contained a great deal of
14 hyperbole. This is not -- and symbolic speech and things --
15 imagine if Kathy Griffin were applying for -- for bond here.
16 Would you say that she should never, for the -- for the rest of
17 her life, be eligible for bond because she took a photograph
18 with a facsimile of Donald Trump's head?

19 Q. No, I'm not saying that at all. I guess my question
20 to you is when you're volatile, when you're upset, you make
21 statements that suggest violence, is that fair, or at least
22 that's the evidence before us?

23 A. When I'm volatile and when I'm upset, I may make all
24 kinds of statements. And I'm pretty careful who I make them
25 to.

1 Q. And today, July 23rd, having known about this call
2 for a long time, you provided the Court with various
3 explanations about why or that you were parsing the words in
4 various ways. And I appreciate all of that, right? You've
5 told all that to the Court today, correct?

6 A. That's true.

7 Q. But the hearer of your call didn't get the -- the
8 commentary or the footnotes that you've provided today, right?

9 A. The hearer of the call is intimately aware --

10 Q. Answer my question. Did the hearer of the call get
11 the benefit of all of the parsing and explanations that you
12 provided to the Court today, yes or no?

13 A. He got it in a different form.

14 Q. Okay.

15 A. In the form of having known me for ten years.

16 Q. Okay. And the Court -- and what you're asking the
17 Court to do is to say that when you're obviously in an angry
18 state, you're going to always know exactly who you're talking
19 to, how they will interpret your words, not act on anything you
20 say?

21 A. I think it's -- yeah. I mean, I don't -- I don't
22 vent to just anybody, generally, I vent to people who know me
23 well, who -- who can handle me.

24 You know, I went to AA for 22 years and there are a
25 lot of things that I said to my sponsor that I didn't say to

1 anybody else.

2 Q. Okay. And so the -- the crux of it is this guy was
3 special, you would never -- no matter how angry you got or how
4 badly your case goes, how much support you think you need, you
5 just wouldn't say those things to other people?

6 A. I -- I do not believe that I would, willy-nilly. I
7 certainly -- anybody who knows me and anybody who has listened
8 to me for any period of time knows what my beliefs are about
9 the appropriate use of violence, and the appropriate use of
10 violence is to defend yourself from violence.

11 Q. Okay. And you agree that in the call you started
12 out pretty calm, right?

13 A. Oh, yeah.

14 Q. And as certain comments were made to you, you
15 escalated pretty quickly, didn't you?

16 A. Yes, I did. But I never left the -- left the area
17 of constitutionally protected speech.

18 Q. You think that saying that someone should go shoot
19 the police is constitutionally protected speech?

20 A. I think wishing bad things to happen to police, yes.
21 Exhorting bad things, if I had solicited somebody to do that,
22 that would leave the -- the realm of constitutionally protected
23 speech. If I had said I was going to do that, if I had said
24 I'm going to go shoot a cop, then that would have been criminal
25 threatening and that would have left the realm of

1 constitutionally protected speech.

2 But I don't like the police and I wish somebody
3 would go shoot them, that remains in constitutionally protected
4 speech, I believe. Obviously we've got a whole panel of
5 lawyers we can consult on that here.

6 Q. That's true.

7 And drugs were found in your house, right?

8 A. Allegedly.

9 Q. Okay. And --

10 A. I wasn't there when the house was searched.

11 Q. Okay. And you do have a prior record, correct?

12 A. Yes, I was arrested by the FBI Joint Terrorism Task
13 Force for selling four ounces of marijuana on several
14 occasions. Rather outside their normal bailiwick, but when
15 you're a political target you're a political target.

16 Q. And just so I understand -- I'm going to stop with
17 this. Just so I understand your point, the testimony before
18 the Court that you're -- is that you did say those things, they
19 do have a violent aspect to them but you were talking to a
20 specific person, at a specific time, and that won't happen
21 again and everybody knows you, and nobody would act on it.

22 A. Well, I'll say this. I have been running my mouth
23 on a syndicated radio show on 200 different FM radio stations
24 in the United States for at least nine years and nobody has
25 shot anybody at my behest yet. So -- so I'm doing pretty good

1 on that respect. I've been able, I think, to -- to communicate
2 myself in a way that the people to whom I communicate
3 understand my meaning and recognize when I use hyperbole.

4 Q. And you understand that your case is a high-profile
5 one, right?

6 A. Oh, I do.

7 Q. And --

8 A. And I hope to make it higher profile.

9 Q. And people care a lot about it, right?

10 A. I certainly do, yes, and many -- yeah, many others,
11 too.

12 Q. And tensions because -- I mean, you already
13 explained it, but tensions, at least the way you viewed the
14 case, I don't know how you view the case today, but at least
15 the way you viewed the case in April, right, was that this case
16 was an unfair overreach of the government?

17 A. Oh, I believe it is, and I hope to prove that in
18 court.

19 Q. Okay. And other people share that view, right?

20 A. Yes.

21 Q. And you're talking at least to one of those people
22 about violence against the government?

23 A. Are you suggesting that nobody should ever criticize
24 the government because somebody might get mad and shoot cops?

25 Q. I'm not suggesting anything. I'm trying to ask you

1 questions just to understand --

2 A. Okay.

3 Q. -- where we are.

4 So my question is just this -- there's a lot of
5 people who care a lot about this case; it's a high-profile
6 case; there's a lot at stake.

7 A. Yes.

8 Q. Do you agree with that?

9 A. I do. There's a lot at stake in this case.

10 Q. And in talking about that case, you made statements
11 that relate to violence against law enforcement, correct?

12 A. To a private spiritual adviser, I did.

13 MR. AFRAME: Okay. Nothing further.

14 THE COURT: Are you talking about your sponsor?

15 THE DEFENDANT: He was not my sponsor. He was a
16 friend of mine that I had attended -- and I hate to break his
17 anonymity, but we haven't said his name -- that I have attended
18 meetings with. That's who I was -- who I was having this phone
19 call with, somebody who knows me intimately and knows that
20 sometimes I'm going to go out and primal scream, but that's all
21 it is, it's a primal scream, and then it's gone.

22 THE COURT: Thanks.

23 Any redirect, Mr. Brown?

24 No? You're muted. You're muted, Mr. Brown. It
25 looks like you said no, but --

1 MR. BROWN: Sorry. I keep forgetting. No, sir.
2 Just argument at this point.

3 THE COURT: Understood.

4 Any more evidence from anybody? None from the
5 government and none from Mr. Brown. All right.

6 MR. BROWN: Right, your Honor.

7 THE COURT: All right then.

8 It's your motion, Mr. Brown. I'll let you go first
9 on the argument.

10 MR. BROWN: Yes, sir. Thank you.

11 So Document 93 is the government's objections and a
12 lot of this has already been covered in previous remarks, but I
13 wanted to zero in on a few things just to clarify.

14 On page 6 of that document, the government likens
15 Rich Paul, which was my client's legal name before he changed
16 it to Nobody, at -- where it's @Nobody4Governor, saying somehow
17 the government thinks that we are dangerous, but prison is
18 safe; where are the guillotines, then likens it to an image of
19 a noose at -- during the January 6th, which they refer to as
20 riots, I guess some people look at that differently, that was
21 erected in front of the Capitol and then another article about
22 a guillotine erected in front of the Arizona Capitol in the
23 same regard.

24 The Court is well aware -- I don't think this is
25 relevant at all to this case. There's no even evidence that my

1 client's a Trump supporter, but I think the Court's also well
2 aware just from the media that nobody was guillotined or hung.
3 The only person killed during that event was a protestor who
4 was a military veteran who was shot by a Capitol police
5 officer.

6 So, you know, that's generally --

7 THE COURT: Nobody gets detained in my court based
8 on their political positions or candidates they -- that they
9 support.

10 MR. BROWN: And I do not believe that to be the case
11 either, Judge. I was just lodging my objection that that
12 argument was raised, respectfully.

13 There's also a reference to the criminal history.
14 There are some references made here. The criminal history --
15 and the Court has that history -- is limited almost solely to
16 drug charges, specifically marijuana, which my client is an
17 advocate of.

18 There is a charge of obstruction of government
19 administration that's mentioned, which I believe was a
20 misdemeanor in the state of New Hampshire. That had to do with
21 his activism. So just to put -- that's not so much as an
22 objection to their objections, but rather just to put in
23 context what they're saying there. The government has already,
24 I believe, stipulated that the remark on page 8 about violating
25 probation with a dangerous weapon, we've both come to realize,

1 both sides, that that was incorrect due to a viewing of that
2 hearing. That was not the finding of the Court.

3 And then the government gets into the strength of
4 its case, which is a factor under the detention statute. The
5 government does correctly say that my client is charged with
6 conspiracy to operate an unlicensed money servicing business,
7 which essentially means the selling of cryptocurrency in
8 exchange for cash without a license, that is one of the counts,
9 and that there's a -- there was a contract between himself and
10 Mr. Freeman -- which we have in evidence, so that's not in
11 dispute -- to do just that.

12 The government then goes on, really, to talk about
13 the strength of the case against Mr. Freeman more than the
14 strength of the case against Nobody. And this is important,
15 your Honor, because, first of all, the Court has granted
16 release to Mr. Freeman, who is the -- and I'm not bashing on
17 Mr. Freeman here; he's innocent until proven guilty as well --
18 but the way the indictment is spelled out and the way the
19 evidence is in the case is the main target of the case.

20 And what the -- the gravamen of the government's
21 case -- and I'll let Mr. Aframe jump in if he disagrees how
22 I'm stating this, but I'm trying to boil it down -- is that
23 Mr. Freeman was having friends, including Nobody and some of
24 the other defendants, open bank accounts because the banks
25 wouldn't do it for him anymore. The banks were shy about

1 trading with Bitcoin buyers and sellers for various reasons.
2 There are risk levels for the banks. And that in doing so
3 these folks were misleading the banks as to the purpose of the
4 bank accounts; they were essentially acting -- as I think both
5 sides, Mr. Aframe and I, have been referring to in our
6 discussions -- as straw bankers.

7 But then the government goes on to -- I believe to
8 attempt to prove at trial, if we get there, that Mr. Freeman
9 was selling Bitcoin to criminals who were defrauding people out
10 of the cash to buy the Bitcoin. In other words, a criminal
11 engages in a romance scheme or some type of other scam with
12 a -- with an unsophisticated or elderly person, a vulnerable
13 individual, and then that person says, okay, I'll pay the
14 money, and then that person says, well, you have to pay it to
15 this guy, but you have to tell him you want to buy Bitcoin.
16 And then that Bitcoin -- so that Bitcoin then goes to that
17 third party, which by its nature Bitcoin is very hard to trace
18 the transmission of it, and so that third-party criminal who
19 may not even be in the United States, or may be right up the
20 road, is able to launder that criminal cash into Bitcoin and
21 evade detection and that Mr. Freeman is -- it's alleged is
22 making all this possible.

23 Now, the government is -- and to be fair to the
24 government, is not alleging -- and it doesn't appear anywhere
25 in the discovery, which I certainly haven't read all of it yet,

1 there's a lot -- that Nobody or any of the other -- Nobody
2 meaning the name, for the record, not nobody -- Nobody or the
3 other defendants acting as straw bankers are necessarily even
4 aware that Mr. Freeman was involved in scams; that they -- they
5 had a contract with Mr. Freeman to simply facilitate the
6 purchase of Bitcoin in exchange for cash since he couldn't do
7 the banking himself.

8 Now, the reason I bring all that up is because --
9 and I -- again, if I'm mischaracterizing anything, I'm sure
10 Mr. Aframe will jump in; I'm trying to fairly characterize a
11 complicated case in a short period of time here -- is when
12 you're talking about the strength of the case as a factor,
13 the -- I ask the Court to consider that's the alleged role of
14 my client, not that he's this bad actor who knows old people
15 are getting ripped off but that he's a person that thinks that
16 he can lawfully buy and sell Bitcoin without a -- without a
17 money transmitting license or a money services business license
18 and that by doing so he helps Mr. Freeman in facilitating these
19 scams, whether it's wittingly or unwittingly. There's no
20 evidence it's wittingly.

21 So I think it's important that the Court know that
22 at some strength of their case and exposure of Nobody at
23 sentencing is an important factor probably in the Court's
24 consideration of the risk here.

25 THE COURT: I really want to make sure -- this is

1 the part of the argument, I'll tell you, Mr. Brown, I'm very
2 interested in, strength of the case. It's not -- frankly, it's
3 not treated very heavily in the papers. Mr. Aframe treated it
4 more.

5 And what -- it sounded like what you were trying to
6 tell me just now is not so much that it's a weak case, but just
7 that your client's sort of culpability level, knowledge of
8 certain factors in the case maybe known to Mr. Freeman, is not
9 strong. That I get. But I'm not sure, honestly, based on the
10 burden of proof for these two charges, how much that really
11 undermines the strength of the case.

12 Can you talk about that a little bit? Because
13 that's -- I'm telling you, for the Court now in this -- in this
14 detention release, the strength of the case is a big factor for
15 the Court.

16 MR. BROWN: Well, we would seek -- without trying to
17 turn this into a motion to dismiss or for summary -- for a
18 directed verdict, Judge, at this point, we would, if we were at
19 trial tomorrow, think the defense would be seeking to prove or
20 cast a reasonable doubt on the issue of whether or not a money
21 transmitting license was required. The state of New Hampshire
22 does not require it. It's generally an issue of state law.

23 This issue gets very, very complicated; Ms. Allen is
24 actually our expert on this issue of money transmission and
25 stuff. I -- I am not. I'm just an old criminal dog, Judge.

1 THE COURT: Yeah.

2 MR. BROWN: But that would be one of our defenses.

3 But regarding the issue of the fraud and the actual
4 damages to these victims, our argument would be that if there
5 was an intent to engage in a conspiracy to do money
6 transmitting, there was not an intent to join in a criminal
7 enterprise to defraud people of money -- innocent people of
8 money. The intent was to sell coins to people who wanted to
9 buy coins who didn't want to use a public --

10 (Unidentified speakers.)

11 MR. BROWN: So I think --

12 (Unidentified speakers.)

13 THE COURT REPORTER: Excuse me. Attorney Brown --

14 THE COURT: Yeah, we got it. We got it.

15 THE COURT REPORTER: No, I didn't hear the last
16 thing that Attorney Brown said, so I wanted to make sure I got
17 it.

18 Public, and then I didn't hear what you said.

19 MR. BROWN: Right. Someone that didn't want to
20 necessarily use a public exchange or have a public record of
21 the purchase or sale of Bitcoin.

22 So, you know, in that -- in that regard, it's -- the
23 argument would be the scope of the agreement.

24 So, you know, we would not want to take on the task
25 of trying to prove that Ian Freeman never knew that a single

1 one of these people was being scammed out of their money.
2 That's Mr. Sisti's job and he's a quite able attorney, as I'm
3 sure the Court's aware.

4 But, you know, we -- we can sit here and say we're
5 not saying Mr. Freeman did anything wrong. But what we're
6 saying is if he did, you know, my client was never in an
7 agreement to do that. My client wasn't in agreement to
8 process -- if he agreed to anything, and they have a written
9 copy of this -- to let money be deposited in a bank account
10 that he controlled and then to transfer money back to
11 Mr. Freeman.

12 THE COURT: Mr. Aframe -- Mr. Aframe, is -- is
13 scienter part of your burden of proof on the unlicensed money
14 transaction charge?

15 MR. AFRAME: Not -- that he knows he's entering into
16 the -- not that he -- not that he knows that he needs a
17 license. I mean, it was -- under the B prong, either he needs
18 a license or he does not. There are going to be legal
19 arguments on that count at some point, I am sure, about whether
20 he needs a license or not. If he does need a license and he is
21 engaging in the -- in the -- in the transmission business, then
22 he's -- my opinion is he's guilty.

23 And I do want to focus, though, on the other count,
24 which is the wire fraud count --

25 THE COURT: I know, but I --

1 MR. AFRAME: At my turn. When it's my turn.

2 But, yes, I think -- no, I think the answer is no.
3 I think there are legal issues that we're going to have to
4 resolve and once we're over that, the knowing doesn't go to the
5 license, if that's your question.

6 THE COURT: That's my question. Thanks for
7 answering it.

8 Sorry to interrupt you, Mr. Brown. Go ahead.

9 MR. BROWN: No, your Honor. I mean, it's a fair
10 point, but we are certainly going to be arguing, whether it's
11 at motion or at trial, depending on how the jury instructions
12 shake out in a case like this, whether or not there was a
13 requirement for a license. And in this particular case, if
14 there's not a requirement for a license, you know, I'm going
15 out on a limb here very early in the case but to say that the
16 entire case against Nobody is on pretty shaky ground at that
17 point because if his intention is to say, well, I'm going to
18 allow you to use my bank account to buy and sell Bitcoin and --
19 because I don't think there's a license required and the
20 government can't prove that one is required, he's not engaging
21 in any crime or any conspiracy at that point because, again, I
22 don't think the government will ever seek to introduce proof
23 that he knew anybody was being scammed out of money if, in
24 fact, Mr. Freeman was doing that. I'm not conceding he was.
25 And why that's also important is possible exposure.

1 So, you know, when we talk about him being a flight risk or a
2 danger with the nothing-to-lose kind of argument the
3 government's made, he's making a comment, I might as well kill
4 myself with heroin, if we get to a sentencing in this case, you
5 know, there's always a question, especially with fraud counts,
6 as to loss and is that attributable to him. And so I think the
7 possible exposure is also an issue as well.

8 I did want to move on unless the Court had more
9 questions on that issue to the magistrate's order and some
10 actions that we had to that, which would be document number 76,
11 your Honor.

12 THE COURT: Yup.

13 MR. BROWN: Specifically -- well, we've already
14 covered one of them; the Court asked that very important
15 question at the beginning, like what was the reason for it.
16 And in -- we want to point out that the magistrate seemed to
17 have rejected the government's argument that the prior history,
18 strength of the case, all those other factors were enough to
19 detain Nobody; said but for this phone call, which the Court, I
20 believe, has already said, hey -- and, Judge, you almost stole
21 directly a line out of my notes for what I was going to say to
22 you today. I don't know if you were a former criminal defense
23 attorney at some point, Judge, but --

24 THE COURT: No.

25 MR. BROWN: -- certainly had an opportunity to hear

1 calls like that and I think your remark was almost word for
2 word what I had written. The only thing I was going to add was
3 I've heard far worse. I've had some of my clients' recorded
4 phone calls played back by U.S. attorneys and state prosecutors
5 where you cringe. I've heard me mentioned, you know. So when
6 you have a guy in jail at the bottom of a hole mentally,
7 especially early in a case, it's a pretty typical,
8 blowing-off-steam session and I -- and I think the Court's
9 regarding it as such.

10 So right there we're arguing that the -- that the
11 magistrate erred and it's, of course, a de novo review, in
12 finding that -- and this is interesting, too. Considering that
13 the burden is clear and convincing evidence, the magistrate
14 says -- and I should refer to him in -- Judge Lynch says to
15 these calls, and I'm jumping in in the middle of the
16 sentence -- does this call merely reflect a person who's
17 frustrated and venting about a charge he thinks is unjust or
18 reflect the mind of a person whose hatred towards the
19 government could move him to a violent action against others if
20 released.

21 There is no definitive answer to that question. So
22 even at that level, where he only heard excerpts, the
23 magistrate's saying, I don't really know. And I would argue
24 that's a concession that it's not clear and convincing evidence
25 when it doesn't pass preponderance. I mean, they're saying it

1 could be one, could be the other. So those are our objections
2 there.

3 Now, regarding the rest of the order, what's
4 interesting about it is there's three cases discussed in the
5 order and I really wanted to talk about two of them. And I'll
6 try to keep this brief.

7 There's *United States vs. Ploof*, which is 851 F.2d 7
8 from the First Circuit in '88; the *Patriarca* case, which is 948
9 F.2d 789, of course First Circuit again, 791; and *State vs.*
10 *Perez-Franco* from 1988, same circuit, 839 F.2d. *Franco* is kind
11 of duplicative of the other two, so I was going to talk about
12 them.

13 What's interesting about them is they're cited in
14 support of detention hearing, but when you go and look at the
15 cases, my credit to Ms. Allen on this who actually went and
16 broke these cases down, they support release in this case
17 rather than detention.

18 In the *Ploof* case, you had a -- you had a pretty
19 disturbing allegation that Mr. Ploof had plotted to first
20 injure and then kill his ex-girlfriend's husband. So she broke
21 up with him and I guess he wanted to kill her husband,
22 allegedly --

23 THE COURT: Hold on.

24 Mr. Brown, I've got to interrupt you, only because
25 it sounds like we're going to be talking here for a little

1 while, and I want to hear every argument you want to make and
2 Mr. Aframe. But we've been going for 90 minutes and the court
3 reporter needs a break.

4 MR. BROWN: Okay.

5 THE COURT: Generally that's my practice,
6 90 minutes. So we're going to take about a 10- to 15-minute
7 break right now and then reconvene. Okay?

8 MR. BROWN: Very good.

9 THE COURT: I apologize for the inconvenience for
10 anybody who's attending, but I've got to think of the court
11 reporter.

12 I do want to thank Ms. Kelly for muting her mic
13 there. It sounded like her kids were getting into it a little
14 bit and she very quickly took care of that and I appreciate
15 that.

16 Thank you. And we will reconvene in about 10 or 15.
17 We'll just keep an eye on the screen.

18 MR. BROWN: Very good, sir.

19 (Recess taken from 12:41 p.m. until 12:55 p.m.)

20 THE COURT: Mr. Brown, you were -- you were making
21 your argument. Please continue.

22 MR. BROWN: Thank you, your Honor.

23 Before I -- I was just starting to discuss the *Ploof*
24 case, which is really important in this particular case.

25 Before I did though, somebody blew right over my

1 head earlier and then during the break I thought about it,
2 talking with Ms. Allen and Mr. Richard.

3 If the argument -- if the case does turn on strength
4 of the case being a major issue, and I appreciate the candor of
5 the Court. It's nice to have a jurist that tells you what the
6 Court is looking at instead of just leaving you to kind of
7 stumble in the woods. So I know that's going to be important
8 for us to focus here.

9 One thing that occurred to me is this case is
10 essentially the same discovery, same allegations, against
11 everyone with the exception of Mr. Freeman who has much more
12 serious allegations than the other five and the others are all
13 out. And I know the Court's aware of that, but I just make
14 that rhetorical point for --

15 THE COURT: I -- that's -- literally that's where my
16 mind is. The -- the problem is, and I'll tell you now, since
17 you -- you know, if you appreciate knowing where the Court's
18 mind is, I -- I try to do that all the time in litigation, to
19 some people's great frustration, but I want you to know what
20 I'm thinking.

21 What the other -- what the other defendants don't
22 have is his record. Okay? I'm not saying it's the worst
23 record I've ever seen because it's not, but it's got some
24 issues. And when you combine it with the strength of the case,
25 it's problematic for me.

1 That said, know I have an open mind on this and I
2 just want you to know what I'm thinking.

3 MR. BROWN: Well, once again, you beat me to the
4 punch on that one. And it was pointed out to me by cocounsel
5 that is the difference between them.

6 THE COURT: Yeah.

7 MR. BROWN: If it's the same case for everybody, he
8 does have that record. It is nonviolent drug offenses and a
9 community misdemeanor having to do with community
10 demonstration. Like the Court said, it's not the worst ever,
11 but it is a way to distinguish him from the other folks. I
12 would argue Mr. Freeman's much more serious charges may
13 outweigh the difference in the facts of record.

14 But I will move along to really the second argument
15 that -- that the defense has here is even if it seems that the
16 standard for pretrial detention was met based on the
17 combination, as the Court has said, of prior record and the
18 strength of the government's case, there's -- with respect to
19 the magistrate court, there's a misapplication of the pretrial
20 detention statute here.

21 The government argued under Section 3142(f)(2)(B),
22 which is that, to wit, a serious risk that such person will
23 obstruct or attempt to obstruct justice or threaten, injure, or
24 intimidate or attempt to threaten, injure, or intimidate a
25 prospective witness or juror. And the magistrate judge found

1 based on that there was clear and convincing evidence to
2 detain.

3 So *Ploof* talks about this very circumstance and as I
4 was starting to say before our recess, the *Ploof* case involves
5 a guy who was -- you know, supposedly wants to kill his -- I
6 don't know what the outcome was, I don't know if he was
7 convicted, but he was supposedly trying to kill his
8 ex-girlfriend's husband. The magistrate in that case held
9 there was no condition or combination of conditions that would
10 reasonably assure the safety of other persons in the community
11 if he were released.

12 He moved to revoke the detention where the district
13 court in that case after conducting de novo review concluded
14 also the government had proven by clear and convincing evidence
15 no condition or set of conditions would ensure the safety. So
16 the same section we're talking about. Specifically, they were
17 looking at the girlfriend's husband and the community at large.

18 The Court did not state whether the husband was
19 likely to be a witness in the case, so we don't know if they
20 were going to call him, but that he was a member of the
21 community in danger. As the magistrate judge here said, the
22 Court has a duty to protect the law enforcement officers in the
23 state of New Hampshire, to paraphrase the previous order.

24 The First Circuit looked at the Bail Reform Act and
25 the First Circuit came to the conclusion in the *Ploof* case

1 that -- and this is a quote from the case: Where detention is
2 based on dangerousness grounds, which is what we have here, it
3 can be ordered only in cases involving one of the circumstances
4 set forth in 3142(f)(1). If there is no contention by the
5 government that (f)(1) conditions exist, the detention based
6 solely on dangerousness to another person or the community is
7 not authorized. So that's the argument of the government here.

8 And so although the magistrate judge found clear and
9 convincing evidence as to (2)(B), f(2)(B), the *Ploof* case says
10 before you can make that finding, you have to go to (f)(1), and
11 there's (A) through (E), and it's an exclusive list. It has to
12 be a crime of violence, that's (A), we don't have that; (B) an
13 offense where the maximum sentence is life, or death, we don't
14 have that obviously; (C) an offense with a max of 10 but under
15 the Controlled Substances Act, we don't have that; (D) any
16 felony if such person has been convicted of two or more
17 offenses described in paragraphs (A) through (C), there's no
18 allegation he has that type of criminal history; (E) any felony
19 that is not otherwise a crime of violence that involves a minor
20 victim. No allegation of that.

21 So *Ploof* seems to stand for the proposition that the
22 very section the government argues for detention under and
23 which the magistrate found detention was the only way to ensure
24 the safety of the community here requires a finding that one of
25 those five type of charges or type of, rather, criminal

1 histories is in play and they are not.

2 Interestingly, the same court in *Patriarca* three
3 years later, they were dealing with a mafia don and suggestions
4 to the contrary about my client's following and that -- his
5 potential to influence people, probably most people would
6 consider a mafia Don to be a more dangerous individual than
7 Mr. Nobody.

8 And in that case, he was not in the -- in the
9 particular case he wasn't charged with any personal acts of
10 violence; he didn't fit under that section. There were no
11 testimonial witnesses subject to threats. He had strong ties
12 to the community, which Mr. Nobody has demonstrated, was in
13 poor health, that's not a factor here.

14 And the Court there said: In theory -- this is a
15 quote -- a mafia boss was an intimidating and highly dangerous
16 character. The government had not demonstrated that this boss
17 posed a significant danger or at least not a danger that could
18 not be overcome, given appropriate conditions.

19 So it -- the Court went on, the circuit court went
20 on to devise a creative adequacy of conditions for release.
21 Essentially it amounted to house arrest for Mr. Patriarca,
22 which we don't believe is warranted in this case, but found
23 that, you know, for the same reasons that it had found three
24 years earlier in the *Ploof* case that the conditions did not
25 exist to allow for pretrial detention because you're not

1 meeting one of those five categories.

2 So, you know, we have sort of a dual argument here.
3 The Court has already said the phone call is of not much
4 importance, so I'll stop talking about that, but we have the
5 argument that, you know, he -- his charges are similar to four
6 other defendants, and much less than Mr. Freeman's, and yet
7 they're all out, the only difference being a criminal record
8 which is nonviolent drug offenses.

9 THE COURT: How many -- what do you mean by his
10 charges are less? What's that mean?

11 MR. BROWN: I believe Mr. Freeman has additional
12 counts in the information that he's charged with --

13 THE COURT: Okay.

14 MR. BROWN: -- that Mr. Nobody is not. I don't
15 have -- the information, pardon me, the indictment. I do not
16 have Freeman's indictment in front of me. I apologize.

17 THE DEFENDANT: It's operating a continuing criminal
18 enterprise, a charge that carries ten to life.

19 THE COURT: Yeah, CCE charge. Thank you, sir.

20 MR. BROWN: As you can see, my client knows the
21 documents of the case better than I do, Judge. I apologize for
22 that.

23 THE COURT: You have --

24 MR. BROWN: So those are dual arguments. The
25 argument would be even if it -- even if the government were

1 allowed to move for detention with a nonviolent charge like
2 this, which *Ploof* seems to say it can't, that it wouldn't be
3 appropriate given that everyone else is out on release and the
4 only difference is some nonviolent drug offenses. We've
5 established very strong ties to the community, no failures to
6 appear in court, a willingness and ability which the Court
7 can -- the Court is the judge of my client's credibility, but I
8 believe he was credible in testifying, his willingness and
9 ability to follow conditions that the Court sets on his
10 release, of which there should be several.

11 If the Court were to grant this, we concede there
12 should be several. The Court has set many conditions on the
13 other defendants. We would suggest the same conditions be set:
14 That he be instructed to live -- provide the address of Tamsin
15 Thorn to pretrial services; that he be instructed to live there
16 and not change residence without their permission and without
17 consulting with them; not to leave the state or the district,
18 of course; to either be employed or be seeking employment or be
19 in an education program and provide proof.

20 Clearly he should not trade in, purchase, buy, sell,
21 or program for a company trading in cryptocurrency while --
22 while -- until the case is resolved; no contact with any
23 witnesses in the case, including law enforcement officers,
24 obviously; and no possession of firearms or other dangerous
25 weapons.

1 We're open to other conditions as well that the
2 government may suggest or the Court may deem proper. As he
3 said, he would follow any conditions and he would give his word
4 to do so.

5 The only thing we would ask if the Court is going to
6 consider allowing for release -- for release here is that he be
7 allowed, consistent with Mr. Freeman's order and Ms. DiMezzo's
8 order, that he be allowed to have contact with them solely for
9 the purpose of the operating of the radio station Free Talk
10 Live. He works with them when he's not in jail, but he works
11 with them on those programs. And just consistent with the
12 orders that have been entered for those two defendants.

13 Thank you for hearing me out. It was quite lengthy.
14 I appreciate your patience, your Honor, and I turn it over to
15 the government.

16 THE COURT: Understood.

17 Mr. Aframe, are you -- I'm looking at Judge Lynch's
18 order which says that you invoked 3142f(2)(B). Are you only
19 under threats, injury, intimidation, obstruction, and all that
20 and not flight risk?

21 MR. AFRAME: As in (2)(A)? You know, I would have
22 to go back and look at the pleadings, but I think at least
23 our -- I think that what we presented evidence on was (2)(B)
24 based on the phone calls, I believe.

25 THE COURT: Yeah. Yeah, I mean, I obviously

1 understood you presented evidence under (2) (B) to satisfy your
2 burden or the phone call evidence to satisfy a burden under
3 (2) (B); I just didn't know you had only proceeded under that --
4 under that subdivision of the act. I don't know one way or the
5 other, because I'm going from Judge Lynch's order not from the
6 transcript or anything else. I just don't know.

7 MR. AFRAME: Yeah. And John Kennedy handled that
8 hearing, but --

9 THE COURT: Yup.

10 MR. AFRAME: -- that was -- that was at least
11 the thrust -- I'm sure that was the thrust of what we said.
12 Whether we also said -- maybe Mr. Brown recalls whether we said
13 anything about risk of flight. I don't -- I don't recall.

14 THE COURT: Okay. All right. Go ahead.

15 MR. AFRAME: Well, your Honor, you know, the -- the
16 question to me is whether there's a -- whether he poses a
17 danger to the community, primarily, and I tried to -- you know,
18 there is the -- there's obviously the criminal record.

19 The evidence against him -- so let me just agree
20 with Mr. Brown, first of all. I don't want to overstate.
21 That's never my -- my way of handling cases.

22 So Mr. Freeman is the focal point of this case.
23 There's no way to state it any other way. As you will
24 understand this case as it -- as the acts come before you, I
25 think that it will be presented that Mr. -- Mr. Nobody and the

1 other defendants were working with and helping out Mr. Freeman
2 with various levels of detailed knowledge about what he was
3 doing and that's -- that's reflected in the difference in the
4 charges. So I don't want to -- I don't want to overstate that
5 in any way.

6 The essence of the crime against Mr. -- against
7 Mr. Nobody is that he helped Mr. Freeman run a money
8 transmitting business that should have been licensed, that's
9 number one; and the way he did that, number two, is he
10 misrepresented to the banks what the nature of the business was
11 going to be in that account. And by doing that, he committed
12 wire fraud.

13 And it's -- there is a document that basically sets
14 forth, that's between Mr. Freeman and Mr. Nobody that that's
15 what they're going to do. Mr. Nobody's going to open the
16 account in the name of his church; Mr. Freeman will have
17 control; Mr. Nobody will do certain things in managing the
18 account to help Mr. Freeman, but Mr. Freeman will be basically
19 pulling the strings. And so that, to me, is very clear
20 evidence of misrepresentation to the bank, which is the
21 gravamen of the wire fraud charge.

22 Mr. Brown has already explained that there'll be
23 some legal argumentation about the money servicing business
24 charge. It's -- we can't really get into all that today.
25 Suffice to say my view is every case that has decided that

1 question has already decided it in the way the government will
2 present it, but, you know, we're just not really prepared
3 today, either side, I don't think, to get into the legal, you
4 know, nuances of those arguments.

5 So strength of the evidence on the wire fraud and
6 the money servicing business charge, especially the wire fraud
7 charge, I think are strong. He has a criminal record filled
8 with multiple offenses, drug offenses. Drugs were found in
9 his -- in his house. A significant quantity of pure
10 methamphetamine was found, from what I believe, in a safe in
11 his house; the safe, by the way, I think that he's referring to
12 in the call when -- or at least the friend is referring to in
13 the call when they talk about, you know, did they find
14 whatever's in the safe.

15 So beyond that, I do think that Judge Lynch's
16 concern, which remains my concern, is the call in the sense of
17 what I was trying to elicit through my --

18 THE COURT: Yeah.

19 MR. AFRAME: -- cross-examination. I don't know if
20 this is a violent man. I'll be honest with you. I find him
21 very engaging when we have these hearings. He's a smart man.
22 He's an interesting man. But he's also a volatile man with
23 lots of supporters who when he's volatile clearly says things
24 that are provocative in a way that's dangerous to the community
25 and that's the concern.

1 You know, the -- a lot of things are going to happen
2 in this case. Maybe they'll break Mr. Nobody's way, maybe they
3 won't. If they don't, there's a risk here that -- and it's not
4 a risk I'm making up. We heard him. And I know he's very
5 intelligent and he's presented all sorts of counter arguments
6 and refinements and I appreciate all of that, but in the
7 moment, he was telling a guy, we need to start shooting police
8 because this case is really unfair.

9 And he may -- maybe today he feels good about the
10 case, but in January or whenever he might not. And if he's
11 out in the community with a large group of people who are
12 supporting him and he makes comments like that, we don't know
13 what will happen. And that -- that's a risk. And it's not a
14 risk -- I mean, it is a risk caused by those other people, but
15 it's a risk caused by his, you know, willingness or penchant to
16 engage in this kind of rhetoric when he doesn't think things
17 are going his way. And I think that's a legitimate thing to be
18 concerned about.

19 You know, I appreciate all the free speech
20 arguments, I'm quite familiar with them, and I don't think
21 anybody should be punished in any way for their beliefs. But
22 when their beliefs attach to what we're -- it's more than
23 beliefs. When their actions attach to what we're concerned
24 about under the law, that's different. And that's -- and
25 that's, I think, the concern that Judge Lynch was getting to.

1 He may be blowing off steam. He may not have meant it. He may
2 just be a guy who likes to hear the sound of his own voice
3 saying that stuff and that's -- you know, maybe, maybe he's not
4 the one that will pick up the weapons. But there's just too
5 much unknown here. But what we do know is he says, like, let's
6 go shoot the pigs; let's get the -- you know, the boogaloo
7 should start; my lawyer should die. Those are all things to be
8 concerned about.

9 So I think that was the thrust of what Judge Lynch
10 was saying. I tend to agree with that.

11 THE COURT: Sure. Clearly. I don't know if that's
12 what Judge Lynch was saying, but that's how I understood your
13 cross and that's -- to the extent that I'm concerned about the
14 calls, and it's not a huge amount, to be honest, but to the
15 extent I'm concerned about the calls it's that issue. It's
16 his -- his encouragement and leadership and how it would be --
17 how his words would be interpreted by others.

18 I don't view -- I don't view Mr. Nobody as someone
19 who's going to, at least in the near future, take up arms or
20 harm his lawyer or harm anybody else. I just don't see that.
21 But he's articulate and charismatic and he's got a pretty good
22 grasp of the First Amendment, I think, and, you know -- I do
23 have concerns, though.

24 Okay. It's your motion. I'll give you the last
25 word on this, Mr. Brown.

1 MR. BROWN: Very good. Thank you, your Honor.

2 And I don't think Mr. Aframe overstates his case or
3 throws bombs. He's a true gentleman. It's been a pleasure to
4 work with him. It's been a pleasure to do this hearing today.

5 Regarding the money -- the legal issues to be
6 debated regarding money transmitter, I do agree with him on the
7 issue of Bitcoin or cryptocurrency requiring a money
8 transmission license. There isn't case law at the circuit
9 level in the First Circuit, but I do agree with Mr. Aframe it
10 seems the decisions nationwide keep falling the government's
11 way there. So we have an uphill climb there.

12 But there is a secondary issue is when are you
13 required to get a money services business license. So at a
14 state level you can become a money service business and each
15 state has their own rules for that. New Hampshire -- so there
16 may be a question of whether New Hampshire does or does not
17 require that for Bitcoin.

18 And then there's the federal level and, of course,
19 we're in federal court, which is governed by FinCEN. And
20 FinCEN says, and this is important and, quite frankly, I don't
21 have enough of a grasp of the discovery, I'll be honest with
22 you, Judge, to know if there may be a big issue here.

23 But FinCEN gives you a 180-day grace period in which
24 to get the licensing and the compliance stuff set up, you know,
25 after you begin acting under what they consider to be a money

1 service business by doing money transmission. They're -- the
2 two terms are almost synonymous, money transmitter or money
3 service business. So there may be an issue on the timing of
4 that. I don't want to overstate -- as Mr. Aframe just said, I
5 don't want to overstate on our end that there is an issue with
6 the 180 days, but we're looking into that, whether there is.

7 And regarding, again, the danger, we believe that
8 the *Ploof* case and the *Patriarca* case address that squarely in
9 that that issue alone cannot be the issue to hold someone under
10 these circumstances.

11 THE COURT: What do you mean, strength of case?

12 MR. BROWN: That -- the strength of the case
13 alone -- yeah, strength of the case with prior record when
14 you're making an argument there has to be a basis for a
15 pretrial detention, as the Court is well aware. And I believe
16 and I don't -- I'm with Mr. Aframe; I don't remember if
17 Mr. Kennedy raised flight risk. I don't think so, or it may
18 have been mentioned just in passing, but it's always been the
19 crux of the argument that the guy is dangerous.

20 And these cases stand for that -- if that's the
21 basis for your request, you've got to fit into the five
22 categories under (f)(1) and it does -- we're not in there. So
23 I don't think that there -- that that's the issue, too.

24 So even if the Court says, well, I think it's a
25 strong case and I also think his prior record coupled with that

1 gives me concern, I do understand, but that's what --

2 THE COURT: So what -- time out. Time out.

3 You're telling me that *Ploof* and *Patriarca* stand for
4 the proposition that if you're going to detain someone under
5 f(2)(B) for --

6 MR. BROWN: Yes.

7 THE COURT: -- obstruction, threats, injury,
8 intimidation, then -- then it has to be a case where you're --
9 but, see, (f)(2) and (f)(1) are two different provisions under
10 which you seek -- under which one would seek detention. I
11 don't know why you would have to satisfy -- you'd have to be
12 one of the cases listed at (f)(1) to -- to satisfy f(2)(B). I
13 just don't -- it's not that -- I mean, nobody's briefed this,
14 so it's not a -- unless -- unless I overlooked it. Because
15 this is a very different decision.

16 Let me take a look at the statute here.

17 I don't understand that -- and if *Ploof* -- hold on a
18 minute. Let me look at this.

19 All right. I'm taking a look at *Ploof* right now and
20 you might be right, Mr. Brown.

21 Interesting.

22 MR. AFRAME: Can I -- well, can I just say
23 something?

24 THE COURT: You know you can. You know you can. Go
25 ahead.

1 MR. AFRAME: So, I mean, looking at -- I mean, I
2 think what we're trying to say is, at least my argument was,
3 the connection of the -- of the statements aren't that they
4 exist in the air, it's that they connect to the violence in
5 this case directed against the FBI. And that's really the
6 point, right? It's all directed at the witnesses and the
7 agents in this case. That's what he was talking. We're
8 talking -- I'm talking about the -- the supporters and what
9 they might do based on his rhetoric, and that is all about
10 obstructing this case, at least that was my argument.

11 THE COURT: Yeah.

12 MR. AFRAME: Because it all does tie to this case.
13 It's not just, oh, he says stuff about other topics.

14 MR. BROWN: Your Honor, can I -- can I respond to
15 that, sir?

16 THE COURT: Look, we're in a legal territory here
17 that is not familiar.

18 MR. BROWN: Well, let me pull back from *Ploof* and
19 *Patriarca*, and I know the Court will take a look at those
20 later, and talk about what Mr. Aframe's talking about.

21 THE COURT: Well, the real issue is you might be
22 taking a look at them later and filing a brief. That's the
23 real issue. I tend to rely on counsel's arguments. But before
24 you short-circuit what I'm talking about, I want to try to
25 figure it out.

1 I mean, see, I -- I understand that -- and I'm
2 reading a passage from *Ploof* right now and it does seem to say,
3 Mr. Brown, it really does, what you -- exactly what you say.
4 It seems to say that if we're arguing about a risk of
5 obstruction of justice, threats, injury, or intimidation, the
6 case has to be an (f)(1) case as well. Okay?

7 Now, so your argument on that you just articulated,
8 Mr. Aframe, I don't see how it solves that problem. It's --
9 your case is not an (f)(1) case, (A) through (E). It just
10 isn't.

11 Now, I never understood f(2)(B) detention for risk
12 of threat to the community to be somehow confined to (f)(1)(A)
13 through (E) cases. This just doesn't come up. It's coming up
14 now. Okay? But I have questions.

15 My first question is the fact that Judge Lynch
16 focused on, okay, focused on f(2)(B), risk of -- risk of danger
17 to the community, doesn't mean that the government didn't move
18 under also under f(2)(A). Because, frankly, I don't see Mr.
19 Nobody -- I keep grasping for your -- you know, your
20 traditional last name and forgetting, sir. And I don't -- and
21 I mean no disrespect.

22 But I don't see Mr. Nobody as personally threatening
23 despite the venting at the jail, but I do see his -- I do see
24 his community engagement as potentially problematic.

25 That said, the problem with Mr. Nobody, really, is

1 he's been a bad risk on supervision. He really has been.

2 Okay?

3 Now, look, that doesn't mean he should be detained
4 right now, it doesn't, necessarily. Especially when trial is,
5 like, in May, which is a long time. Like the length of this --
6 and that's by agreement; everybody agreed to that. But I -- I
7 consider that a long time to detain a person pretrial. All
8 right?

9 Frankly -- so that's why I'm so fixated right now on
10 strength of case. Because, look, if the case is really strong,
11 which is what -- which is what I've understood, I'll be honest.
12 We talked about this. You might remember, Mr. Brown, we talked
13 about this at the -- at the sort of -- the complex case
14 conference, when all the lawyers were together, and I was
15 coming at Sisti a little bit about it because I knew Sisti was
16 going to say -- Attorney Sisti, was going to say -- oh, this
17 case stinks, Judge, it's got no grit. I knew he was going to
18 say that. And I asked him why and he kind of -- he didn't have
19 a great explanation at that point, but he said what he always
20 says which was we're going to test it and I believe that.

21 But I'm also very accustomed to seeing these federal
22 criminal statutes, all right, and as you pointed out,
23 Mr. Brown, what case law is out there are the unlicensed money
24 transaction statute goes pro prosecution because that's how a
25 lot of these statutes are written. They're very broad. And a

1 lot of -- they criminalize a lot of conduct.

2 Now, if it's a strong case and conviction looks --
3 and I don't even prejudge it, and I don't even decide, right,
4 the jury decides. But it's a strong case and he's a bad risk
5 on supervision, I don't mean to -- I'm going to give you a
6 chance to talk about that, Mr. Nobody, I promise, but I'm just
7 looking at your record. All right?

8 He's a bad risk and it's a long delay. You know,
9 there's been times he's failed to appear in court, there's been
10 times he was found in contempt of court. He's just not a
11 person who -- if this is a legitimate
12 political -- to me it's a legitimate political position. He's
13 not a person who recognizes the authority of the federal
14 government to be as involved in people's lives as it is. The
15 problem is -- I think that's a fair characterization of your
16 position, Mr. Nobody, right?

17 THE DEFENDANT: (Nods head.)

18 THE COURT: And the problem is I -- I -- I run a
19 small part of that federal government and that's the part of it
20 that is going to impose some restrictions on his liberty
21 leading up to trial. And I worry about -- when you asked him
22 the question, Mr. Brown, are you going to follow the rules, and
23 his answer was a very thoughtful answer. This is a very
24 serious person we're talking about. I don't mean seriously
25 dangerous. I mean he's a serious man. All right? Even though

1 he has a sense of humor, he's a serious person. And he said,
2 you know, to the extent they're not immoral, I'll follow the
3 rules. And he was talking about something -- I know, he wasn't
4 talking about -- you know, he was talking about something much
5 more in the line of traditional morality, but he had a lot of
6 serious thoughtful positions on the government.

7 And I -- I -- I don't want him weighing -- I don't
8 want him weighing the rules of deciding whether he's going to
9 follow them, especially when he's got a little bit of this
10 record of -- and I saw you shaking your head, Mr. Nobody, but
11 you have this record of failure to appear and contempt of court
12 and all that and it's not -- doesn't give me hope.

13 You're saying no. Let me --

14 THE DEFENDANT: I don't believe I've ever failed to
15 appear, certainly not since I was a teenager. There may be a
16 failure to appear in Michigan in the '80s.

17 THE COURT: I could be wrong. Let me take a check.
18 And I'll tell you right now, if it was that long ago, it won't
19 bother me nearly as much.

20 THE DEFENDANT: Okay.

21 THE COURT: Let me take a quick peek at this. I
22 just need a second. There it is.

23 All right. It was -- you know, it was when you were
24 in New Hampshire, Cheshire County Superior Court, Mr. Nobody.
25 There was a little -- it looked like a small drug case -- well,

1 it was possession/sale of drugs, so I don't know what happened
2 with it. Eventually, yeah, you were convicted after a jury
3 trial in 2013.

4 But it says arraignment -- oh, it's failed to
5 appear for your arraignment. There could be a number of
6 reasons for that. It wasn't like -- I guess it wasn't a
7 situation where -- I don't know. Your record has a failure to
8 appear. You're telling me that didn't happen?

9 THE DEFENDANT: I do not believe there has ever been
10 a failure to appear. It's possible that an arraignment was
11 scheduled without ever notifying me that there was an
12 arraignment and I was arrested later and brought to
13 arraignment. So that's possible, but any indictment that I
14 have been aware of I have appeared religiously and fought
15 vigorously.

16 THE COURT: All right. That's fair enough. And
17 I -- because I know how district court works, I pretty much
18 take you at your word there. That kind of thing does happen.

19 But there's a lot of probation violations and the
20 like. It's just a little bit problematic.

21 So here -- I guess here's what I want to know.

22 I guess I can find out this part. I can find out
23 this part. I'm going to take a look at the transcript from
24 the hearing before Judge Lynch. If the government didn't move
25 on -- on flight risk or risk of failure to appear, I'm probably

1 not going to focus on it unless there's a law that says I
2 should anyway. And I doubt there is.

3 I guess I want to get a sense of -- hold on a
4 minute.

5 The other legal issue I think -- and, look. If I
6 want legal -- if I want any kind of legal work on this, I'm
7 going to issue an order that tells you what to do. I'm not
8 just going to muse here out loud and confuse you. But I want
9 to look at Judge Lynch's order again.

10 I'm very glad I had the hearing because, as you know
11 from my earlier order, I was not prepared to -- I was not
12 prepared to deviate from Judge Lynch's order before. Just give
13 me a moment.

14 There we go. Okay. Okay. Give me a moment.

15 Okay. Here's what it comes down to, right? Here's
16 what I'm having a little bit of a struggle. Under 3142(f), and
17 we've been having this -- we've been having this little debate
18 about -- or discussion I should say -- about whether (f)(1)(A)
19 or (f)(2)(A) and (B) -- I think -- about whether (f)(1) or
20 (f)(2) are interrelated in the way that *Ploof* suggests, as
21 you're describing it, Mr. Brown.

22 But the statute, the intro -- the intro to
23 subdivision (f) is: The judicial officer shall hold a hearing
24 to determine whether any condition or combination of conditions
25 set forth under subsection (c), that's just the conditions,

1 right, of this section will reasonably assure the appearance of
2 such person as required and the safety of the community.

3 Right?

4 And that's what it is. It's just -- it's not so
5 much that I think he's going to fly to Canada. I don't. I
6 don't. At least I don't know. That's not really what I'm
7 focused on. Or -- or personally be out there creating a public
8 health and safety -- public -- public safety threat. It's more
9 that, look, if he's out, there's going to be conditions.
10 Right? And --

11 MR. BROWN: Yup.

12 THE COURT: -- there's a track record that's not
13 great and that's, I think, putting it charitably, and there's
14 this drug use problem.

15 Look, I'm not generally in the habit of detaining
16 people over marijuana use. That's not really my practice.
17 Although I'm not in the detention business very much, only when
18 somebody appeals.

19 But, you know, there was meth recovered; he admitted
20 during his interview he uses meth sometimes as a substitute.
21 So I don't think he's a meth addict or anything like that. I
22 don't -- he doesn't appear to be. And -- but meth is not a
23 joke, and it sounds like he keeps it sort of a substitute
24 sometimes for when he can't get his lawful prescription. But
25 it's --

1 THE DEFENDANT: Uh-huh.

2 THE COURT: But -- and here's what happens. When
3 people are on supervision and they've got -- and they're drug
4 users, they get violated and they're back in front of me. And
5 the parole officer said the same thing; if he can't abide by
6 it, he can't abide by it. I don't want to be in this vicious
7 circle. So --

8 THE DEFENDANT: If I may suggest, I would agree
9 to -- to, as a condition of my release, getting a legal
10 Adderall prescription to treat my ADD and then I have no need
11 to self-medicate.

12 THE COURT: I get it. I get it.

13 Okay. I interrupted you, Mr. Brown. You were
14 trying to make a point.

15 MR. BROWN: No, sir, not at all.

16 THE COURT: Yeah. Okay.

17 MR. BROWN: No, I think -- again, I think it's an
18 efficient process. I'm not trying to flatter the Court. I
19 just -- I truly believe that, that the Court lets us know where
20 the Court is focused here so that we can focus our arguments in
21 such a manner.

22 Going back to something the Court was asking about
23 earlier, and Mr. Richard sent me an email -- thank you,
24 Mr. Richard -- while we were talking. The document was right
25 in front of me, but Document 93 which is the government's

1 objection, in paragraph 2, they do confirm that in their
2 initial motion for detention, number 71, that the government
3 move for detention under f(2) (B). So it makes no reference to
4 moving under (f) (2) (A), which is -- and I -- and not that the
5 Court needs reminding, but I'll reiterate. It says a serious
6 risk that such person will flee.

7 The Court's concerns from a commonsense standpoint
8 are obvious with the prior history that there may be an issue
9 with him violating pretrial detention -- I mean pretrial
10 release. Pretrial detention is what we're trying to get out
11 today.

12 But I don't think that's what (A) talks about. It's
13 the flight risk. Obviously if he goes and violates the
14 conditions the Court sets, which may also be random screens or
15 regular screens as the Court deems that necessary to protect
16 the community, then we fall under violation of pretrial
17 release, then he's looking at pretrial detention if proven
18 under a whole different statute. So --

19 THE COURT: Yup.

20 MR. BROWN: So we're asking the Court -- well, I
21 guess I'll put it in an old-fashioned process, to give him the
22 chance. I mean, he's got the rope to hang himself. As the
23 Court said, he doesn't have the means and he's not the type of
24 guy who's going to take off for Europe or Canada and never come
25 back. The question is whether he's going to go out and do a

1 bunch of dumb stuff like meth and the Court has to waste more
2 time on the issue instead of moving forward on the merits of
3 the case.

4 And I'm asking the Court to give him the
5 opportunity. Give him that rope. If he wants to go out and
6 violate the orders the Court sets down, then he's going to be
7 back in there and he'll have only himself to blame, as we often
8 say.

9 THE COURT: Yup. I get it.

10 Anything else you want to say, Mr. Aframe.

11 MR. AFRAME: No. I mean, I don't -- you know, I
12 could -- I've now read *Ploof* and I could get into that, but I
13 think that's better done in writing if you want. So I'm not --

14 THE COURT: Okay. Yeah. I mean, reading the
15 statute -- I don't know. That -- reading the statute --

16 MR. AFRAME: Well --

17 THE COURT: It's a -- reading the statute, I -- I
18 don't understand how -- how subsection 2 would somehow
19 incorporate subsection 1. I don't get that.

20 MR. AFRAME: What has to happen -- I'll just try to
21 summarize my understanding really quickly, but not go into
22 great detail.

23 What has to happen is the Court has to make a
24 finding that (2)(B) is met, that we've actually demonstrated
25 that he presents a risk of obstruction of justice and

1 intimidating witness. We can't just say it. You have to --
2 you have to actually make a finding. In *Ploof* they didn't make
3 that finding, or at least clearly didn't make that finding. So
4 there was no (f) category under which it was clear that a
5 detention hearing was being held. So I don't know if Judge
6 Lynch did that or not. I'd have to go back and read how he --

7 THE COURT: Okay.

8 MR. AFRAME: But I agree with -- by the way, I agree
9 with Attorney Brown because I was texting with Attorney Kennedy
10 on the side, just to confirm. (2)(B) was our basis.

11 THE COURT: Fair enough. That's -- I appreciate the
12 candor.

13 All right. Look. Here's what we're doing.

14 You know, I issued that order saying I wasn't going
15 to overturn Judge Lynch's order providing for a hearing.
16 Whoever's idea it was -- frankly, I thought Mr. Nobody might
17 just want a hearing because he wanted to be heard. And that's
18 probably part of it. But whoever insisted on the hearing, good
19 idea, because I'm definitely thinking about this now.

20 So I'm going to take it under advisement here and
21 I'm going to issue a brief order asking counsel to address a
22 couple of legal issues in a short time frame, because I
23 don't -- you know, I don't want to detain anybody longer than
24 necessary. Okay? And it's -- especially with this trial so
25 far away, you know.

1 So, look, I'm not guaranteeing anybody I'm going to
2 grant this motion. What I'm guaranteeing you is I'm taking it
3 very seriously. And I do. And I'm going to look at it and
4 issue an order shortly after.

5 This sticky legal issue that Mr. Brown's brought up
6 here, I need to resolve that. One issue's been taken off the
7 table. Mr. Aframe, he took (f)(1) off the table. And if
8 there's anything else I want you to touch on, I'll put it in
9 the order. Because I think there was another issue.

10 Let me say a few things, though, that might -- let
11 me say a few things that might help you if you're going to make
12 any more arguments.

13 Look, I don't -- look. To the Court, this is not a
14 Bitcoin case; this is not some type of -- and I don't know what
15 the political motivations are in the -- in Congress's
16 legislation on criminal law generally. I don't view this as a
17 Bitcoin case. I don't know where the enforcement priorities
18 lie with DOJ with any of these. I just look at the indictment
19 and the evidence and this is a wire fraud case and it has an
20 element of this unlicensed transaction, which you're all
21 telling me the law cuts in favor of the prosecution at this
22 point. Could change once some circuit courts get a look at it,
23 but at this point it's not -- it's a wire fraud case to me
24 mostly. It's not about Bitcoin.

25 I'm not particularly -- I'm not focused on the phone

1 call with respect to Mr. Nobody's own conduct. I do have some
2 concerns, though. Like even the things I saw in the chat,
3 okay, suggest to me that there are people interested in
4 Mr. Nobody who don't have a great understanding of what we do
5 in court. And I don't mean any disrespect by that. Who does,
6 really, who doesn't participate in this process? But I worry
7 about people -- people being -- getting the wrong impression
8 about the goings-on about what -- about what we're doing here
9 and getting the wrong impression by what Mr. Nobody says
10 because he's -- he's a charismatic, quite intelligent person.

11 I do want to give you a heads-up on something. I --
12 I don't know if -- if I release him, okay, under conditions, I
13 don't know if I'm going to be on board for the radio show.
14 Okay. For that reason. Just understand that. All right? And
15 that concerns me because I think that's part of how you make
16 your living. Right? And I don't want to deprive you of your
17 living, but I don't even know how that works monetarily, the
18 radio show. But I -- I may have a problem with that and
19 that -- that might be part of the order. Okay? So that's on
20 my mind.

21 I -- but to the extent -- it sounds to me like
22 Mr. Nobody has some political views that aren't illegitimate to
23 the Court and I don't know if they translate necessarily into
24 danger. All right? I -- I -- a lot of it sounded very much
25 like what I routinely hear on prison phone calls when people

1 are angry about the charges, angry about what they perceive as
2 the injustice behind the charges, and angry at their counsel
3 and all that. That's most of what I heard. There's a few
4 things that were a little troubling and I don't want -- I don't
5 want that to pose a threat or danger, so I'm going to -- I'm
6 probably going to address that if I release him through
7 conditions is what I'm saying. All right?

8 That's it. We're under advisement. I'll get an
9 order out for you to brief it. Doesn't have to be lengthy.
10 I'll try to put some reasonable limits on it.

11 But this -- this *Ploof* case -- and I don't know if
12 it would limit me, honestly, and even limit this whole
13 endeavor, because what you're basically saying, Mr. Brown, is
14 this -- this would be a -- an unlawful detention order, right,
15 if I interpret *Ploof* as you do. And I don't yet, but I'm going
16 to look at it.

17 All right. Look for an order from the Court
18 shortly. I appreciate everybody's participation. Your
19 presentations were candid and thoughtful and excellent.

20 And we're under advisement. We will either
21 reconvene or I'll get an order out one way or the other.

22 MR. RICHARD: Thank you.

23 THE COURT: We're adjourned.

24 (Proceedings concluded at 1:41 p.m.)
25

C E R T I F I C A T E

I, Liza W. Dubois, do hereby certify that
the foregoing transcript is a true and accurate transcription
of the within proceedings, to the best of my knowledge, skill,
ability and belief.

Submitted: 1/18/22

/s/ Liza W. Dubois
LIZA W. DUBOIS, RMR, CRR